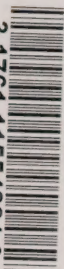


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# **Deserted WIVES' and CHILDREN'S maintenance legislation in Canada**

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Bien-être social  
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DESERTED WIVES' AND CHILDREN'S MAINTENANCE  
LEGISLATION IN CANADA

Welfare Research Division

Policy Research, Planning and Evaluation Branch

Published by authority of  
the Honourable Marc Lalonde  
Minister of National Health and Welfare

Maurice LeClair, M.D.  
Deputy Minister of National Health

A. W. Johnson  
Deputy Minister of National Welfare

April, 1973









## FOREWORD

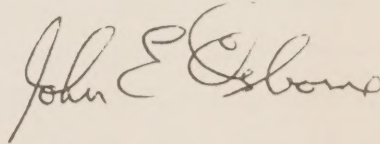
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This review of legislation on the maintenance of deserted wives and children is a revision of the bulletin published in 1958. It is intended as a general reference only; those wishing to make an extensive study of provincial law on this subject should consult the statutes. No account is taken in this bulletin of practice which in some areas may not coincide with the authority given under the Act, for example, some of the methods of enforcement authorized are seldom used.

Because of the concern of social agencies over the extent and effects of desertion, a section has been included on statistical sources and on factors which need to be taken into consideration in any assessment of the situation.

We wish to express our appreciation to the provincial deputy ministers of welfare for their cooperation in arranging to have the provincial chapters reviewed in draft.

The bulletin was prepared in the Welfare Research Division by Miss Ruth Brown.



John E. Osborne,  
Assistant Deputy Minister,  
Research, Planning and Evaluation (Welfare).



# TABLE OF CONTENTS

	<u>Page</u>
Foreword .....	iii
Introduction .....	1
The Criminal Code .....	1
Provincial Statutes .....	2
General Review of Provincial and Territorial Legislation .....	3
The Meaning of Desertion .....	4
Procedure Relating to Maintenance Orders .....	7
Reciprocal Enforcement Legislation .....	11
Provincial and Territorial Legislation .....	13
Newfoundland .....	13
Prince Edward Island .....	20
Nova Scotia .....	26
New Brunswick .....	33
Quebec .....	39
Ontario .....	43
Manitoba .....	50
Saskatchewan .....	58
Alberta .....	67
British Columbia .....	73
Northwest Territories .....	84
Yukon Territory .....	89
APPENDIX A - Incidence of Desertion .....	95
APPENDIX B - Summary of Maintenance Provisions .....	101





DESERTED WIVES' AND CHILDREN'S  
MAINTENANCE LEGISLATION IN CANADA

Introduction

The principle of family responsibility for maintenance of its members is deeply rooted in law and custom. In Canada, both federal and provincial legislation provides for legal action if this responsibility is evaded. The main legislation affecting desertion is embodied in the Criminal Code of Canada and in provincial statutes for securing the maintenance of deserted wives and children.(1)

The Criminal Code(2)

The Criminal Code of Canada sets out penalties for a husband or parent who fails to maintain his wife or child. The Code is used as necessary when provincial legislation does not cover the situation or where the intention is to punish the defaulting husband.

Section 186 imposes a legal duty upon parent, foster parent, guardian, or head of family to provide the necessities of life for a child under sixteen years of age, and upon a husband to provide for his wife. Section 186(4) reads: "For the purpose of proceedings under this section, (a) evidence that a man has cohabited with a woman or has in any way recognized her as being his wife is, in the absence of any evidence to the contrary, proof that they are lawfully married; (b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child." Penalties are provided if a husband or parent fails to meet his responsibilities with the result that the wife or child is in "destitute or necessitous circumstances", or if the life of the wife or child is endangered or health permanently endangered. A man who has left his wife and family for at least one month without making any provision for them is

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(1) This bulletin is limited primarily to those provincial acts dealing specifically with desertion. Also, it does not consider, except incidentally, other legislation bearing on family situations, the effects of the common law, or legislation relating to ordinary court procedure.

(2) S.C. 1953-54, c. 51, as amended.

considered to have failed to provide the necessities of life. He may not plead as a defence the fact that necessities may have been provided by another person not under a legal obligation to do so. If convicted of an indictable offence under this section he is liable to imprisonment for two years or, on summary conviction, to a fine or imprisonment or both. In the latter case a fine of not more than \$500, or imprisonment of not more than six months may be imposed. Where indicated the Court may suspend the passing of the sentence for a period not to exceed three years (Section 638). While in this fashion maintenance may be secured to a certain extent, action under the Code is punitive only and the Court has no power to order that maintenance be paid.

### Provincial Statutes

The provincial statutes give the wife recourse in law to obtain a court order for maintenance against her husband and provide for penalties if he fails to comply with the order. From time to time provinces have amended their maintenance legislation to permit greater flexibility of administration and to provide greater protection for the wife and children. In several jurisdictions the husband may make application to the Court for an order of maintenance against his wife or for an order including other provisions. Also, more effective methods have been devised to facilitate enforcement. All provinces since World War II, for example, have enacted legislation to enable reciprocal arrangements for the enforcement of maintenance orders to be made with other jurisdictions in or outside Canada.



## GENERAL REVIEW OF PROVINCIAL AND TERRITORIAL LEGISLATION

Provincial legislation for deserted wives and children is concerned with securing support for the wife and family from the husband or father when he has failed in his obligation to provide "the necessities of life" or, in Nova Scotia and Manitoba, "reasonable maintenance"; some of the statutes apply also to the mother under certain circumstances. (1) Some legislation also applies to a deserted husband.

All provinces have statutes on desertion, and in some provinces the initial legislation on desertion was passed early in this century. Amendments have been made from time to time giving the wife or children more protection through changes such as broadening the definition of "deserted wife", "deserted child", or the definition of "cruelty", extending the powers of a magistrate in issuing a warrant, and placing the onus of proof of inability to pay upon the husband.

Legislation for the maintenance of deserted families in some provinces takes the form of separate acts and in others is a part of a broader act. Five provinces have separate desertion acts: in New Brunswick, Ontario and Saskatchewan these are entitled, "The Deserted Wives' and Children's Maintenance Act", and in Nova Scotia and Manitoba the "Wives' and Children's Maintenance Act". (2) In the remaining provinces, except Quebec, desertion legislation is

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- (1) Filiation orders are not included in legislation dealing with desertion, except where maintenance responsibilities generally set out in a composite Act. Maintenance from a putative father on behalf of a child born out of wedlock is usually obtained through legislation dealing with the children of unmarried parents.
  - (2) In these five provinces there are also separate acts relating to parents' maintenance. In addition, Ontario and Nova Scotia each have a "Children's Maintenance Act"; Ontario's Act states that every parent is liable for the maintenance and education of his child to the age of sixteen years, or if in full time attendance at an educational institution, to the eighteenth birthday. A penalty is provided if he fails in his obligation. Nova Scotia's Act specifies that the parent or guardian is responsible for providing the necessities of life for a child to the age of sixteen unless there is lawful excuse for not doing so. The Maintenance Order Act of Alberta sets forth similar responsibilities.

part of a general statute which includes, besides provision for support in case of desertion, sections on other aspects of family responsibility, such as liability for support of parents. In Newfoundland, desertion legislation is part of "The Maintenance Act", which sets out responsibilities of family members generally. In Prince Edward Island a section "Deserted Wives and Children" is contained in "The Children's Act", along with sections on legitimation, children of unmarried parents and parents' maintenance. Alberta has provision for the support of a deserted wife and family in "The Domestic Relations Act", which also deals with other matters affecting husband-wife relationships. In the Province of Quebec the duties of family members to each other are contained in the Civil Code.

In 1972, British Columbia passed the "Family Relations Act", which repealed the "Wives' and Children's Maintenance Act" and which as noted in the explanatory notes to the Bill, codifies "subject to the Divorce Act, Canada, the law pertaining to matrimonial and family relations, and the remedies and liabilities of spouses, children and parents". The application of Part IV (Family Maintenance) is not restricted to the protection of a wife only; maintenance may be obtained for one spouse from the other. This Act also contains provisions relating to judicial separation; alimony, maintenance and custody; parent's maintenance; and reciprocal enforcement of maintenance orders.

The Yukon Territory includes provision for deserted wives and children in "The Maintenance Ordinance" (passed in 1958 to supersede The Deserted Wives Maintenance Ordinance of 1938). In the Northwest Territories "The Maintenance Ordinance" sets forth the responsibility of members of the family for maintenance.

### The Meaning of Desertion

#### Deserted Wife or Spouse

Provincial legislation on desertion extends beyond the type of case in which the husband's non-support is coupled with his deliberate absence from the home. In all provinces, the term "deserted" is extended to a wife who has left her husband and is living apart from him because of his acts of cruelty, and in nearly all, because of his

refusal to support her. Some of the statutes specify additional grounds upon which a wife may leave her husband and be considered deserted: in seven provinces, for the husband's uncondoned adultery, and in Manitoba, Prince Edward Island and Newfoundland, for excessive drinking, which renders him "unfit and improper" to have custody of his infant children. British Columbia Act does not use the term "deserted" but sets out the grounds on which one spouse may apply for an order of maintenance against the other; these include frequent drinking of intoxicating liquor or frequent use of a narcotic as defined in the Narcotic Control Act (Canada) by reason of which a spouse could not reasonably be expected to live with the other. The Civil Code of Quebec provides that a husband or wife may obtain a separation on the grounds of adultery, non-support, outrage, ill-usage or grievous insult; there is no definition, however, of "deserted wife" as such.

The terms of the legislation in three jurisdictions (Quebec, British Columbia, and the Northwest Territories) apply equally to husband and wife.

Some provinces include in the statute relating to desertion provision for a destitute wife whose husband fails to provide her and their children with necessities when he is in the home and is able to do so. In other provinces, this provision is contained in other statutes. (1)

In the legislation of all provinces and territories uncondoned adultery on the part of the wife makes her ineligible for maintenance. (2) If adultery occurs after an order for maintenance is made, the order may be rescinded. The Manitoba Act specified that a wife who deserts her husband "without lawful excuse" has no claim to maintenance.

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(1) As noted above, the Criminal Code provides that a husband is responsible for the support of his wife and family, and provides penalties for failure to do so.

(2) In most provinces it is specified in the legislation that proof of adultery for this purpose does not constitute proof under any other Act.



## Deserted Child

A child is defined as deserted when deserted by a person specified in the law. The legislation of Ontario defines a "deserted child" as one deserted by "his father"; that of Newfoundland uses the term "parent" which includes stepparent, adoptive parent, guardian or a person who has the care of the child or who is charged with or liable for the maintenance of the child. The Acts of Nova Scotia and New Brunswick state "father or mother"; that of Saskatchewan uses the term "parent", British Columbia's Act outlines the liability of the "parent", Manitoba specifies the parent, guardian, or other person liable for the support of the child. Under the Manitoba Act, it is further stated that the mother is held responsible for the maintenance of her children in the same way that a father is, but this does not absolve the father from his responsibility.

In most provinces a "deserted child" is defined as one under sixteen years of age. Newfoundland sets the upper age limit at the seventeenth birthday and Manitoba and Nova Scotia at the eighteenth birthday. Three provinces, Newfoundland, New Brunswick and Saskatchewan, extend the definition of "child" when the child is dependent because of physical or mental disability -- in Newfoundland and New Brunswick the definition is extended to the nineteenth birthday and in Saskatchewan to the eighteenth birthday. British Columbia does not define a "deserted" child but sets out the conditions under which any person may make application for maintenance on behalf of a child under nineteen years.

The maintenance legislation in four provinces, Nova Scotia, Manitoba, Saskatchewan and British Columbia, makes specific provision for the children of common-law unions. In Nova Scotia, maintenance may be obtained for the mother and child if the couple have lived together as man and wife continuously for at least five years preceding the laying of a complaint. In Manitoba if the couple has cohabited for one year or more and the man is the father of the child, maintenance may be obtained for the mother and the child provided application is made within one year after they have ceased to live together. In Saskatchewan maintenance may be obtained for the child but the time limit is set at

two years from the date when the parents ceased to live together or from the date of the last maintenance paid for the child. In British Columbia maintenance may be obtained for a child of one member of a common-law union if the other has contributed to the support and maintenance of the child for at least one year during a minimum period of at least two years while they lived together as husband and wife.

### Procedure Relating to Maintenance Orders

A wife who has been deserted and who needs financial support from her husband may lay an information or complaint before the court, or, in most provinces, it may be laid on her behalf by some other person such as a municipal official. A child's next friend or the person having the care and custody of the child may act on behalf of a deserted child.

Following the laying of the complaint, a summons is issued requiring the defendant to appear before a judge to show cause why he should not be required to contribute to the maintenance of his spouse and/or children. In some provinces a warrant for arrest may be issued whether or not a summons has already been issued, particularly if it appears that the defendant may leave the province. In most provinces the hearing will proceed whether or not the husband (or spouse) or parent is present, provided that he has been served with a summons or that there has been a substitute notice of summons. Although the court may order a summons served on a husband (or a spouse) or parent outside the province, attendance at the hearing is voluntary since the court has no jurisdiction to enforce attendance of a resident of another province. If it seems unlikely that he will appear and he is known to be residing in another province, the court may in his absence and without service of notice on him, make a provisional order which will be forwarded to the province where he is resident (see below section (3) "Reciprocal Enforcement Legislation").

All provinces make provision for the hearing to be held in private at the discretion of the judge. The Manitoba Act notes that the judge may be able to exercise a conciliatory function more effectively in private.

Cases of desertion or non-support under provincial legislation are, in most provinces, heard in a provincial court (family division), in a family or juvenile court, or in a magistrate's court. In Prince Edward Island they are heard in the County Court and in Quebec in the Superior Court.

### The Maintenance Order

Although in most provinces, the responsibility of a spouse under the desertion legislation for the support of the other is confined to the responsibility of the husband for the support of the wife, in three jurisdictions -- Quebec, British Columbia and the Northwest Territories -- the responsibility of husband and wife is mutual and a wife may be required to contribute to the maintenance of her husband when she has deserted him.

If it appears that the wife or, depending on the province, the spouse, or child is deserted or destitute within the meaning of provincial law, the court may make a maintenance order against the husband (or spouse) or parent for the support of the wife or children. The court order specifies the amount of maintenance to be paid, the interval of payment, and the payee.

In fixing the sum to be paid for the maintenance of his wife and children, the judge takes into consideration the means of both husband and wife. Some provinces specify a maximum weekly amount; others leave the amount to the discretion of the court.

The court may order payment to be made direct to the wife or to a third person on her behalf. In Newfoundland, it is provided in the Act that payment shall be made to a third person when an order has been made against a husband who, while still living in the home, is failing to support his family because of his irresponsibility.

When children only are to be considered, the means of both parent and child are assessed. Usually, if the children are in the custody of the wife and she is financially able to provide for herself and the children, the father may be assessed for not more than half the amount necessary to maintain the children. Payment on behalf of a child may be made to the person having the care and custody of the child or to a person specified in the order.



Some statutes specify that other provisions may be included in the maintenance order, such as a clause forbidding the husband to enter the wife's premises under penalty of fine or imprisonment, or provision for the custody of children and right of access by any person or by either parent.

Several provinces have amended their desertion legislation since 1967 to provide that orders of the Supreme Court for the payment of alimony in divorce cases<sup>(1)</sup> may be registered in the appropriate court to have the same effect as an order made under the desertion legislation.

### Court and Legal Costs

Court costs, which may include counsel fee, are charged to the husband or parent at the time the maintenance order is made. Costs incidental to the summons are usually borne by the complainant, although if the complainant is unable to pay, some provinces provide that costs be paid out of a fund appropriated by the Legislature for the purpose.

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- (1) The Divorce Act passed by Parliament in 1967 provides that when a petition for divorce has been filed the court may make an interim order for the payment of alimony or an alimentary pension by either spouse for the maintenance of the other pending the hearing, and upon the granting of a decree nisi of divorce, the court may make an order requiring either the husband or wife to secure or to pay such lump sum or periodic sum as the court thinks reasonable for the maintenance of the other spouse and the children of the marriage. The court may also make an order providing for the custody, care and upbringing of the children of the marriage. The court may vary the order from time to time or rescind it in accordance with the conduct and circumstances of the parties concerned. The court may direct that any alimony, alimentary pension or maintenance be paid either to the husband or wife, as the case may be, or to a trustee or administrator approved by the court.

### Provisions for Enforcement

The Acts in all provinces and territories make provision for the enforcement of a maintenance order, and failure to comply with the terms of an order may result in imprisonment.

Among other provisions for the enforcement of maintenance orders are the following: forfeiture of bond or deposit required by the court at the time the order was made; the filing of the maintenance order in the appropriate office to form a lien and charge on any land which the husband owns; the issuing of a distress warrant authorizing the levying of the amount owing against the husband's goods and chattels; the attachment of debts owing to the husband; the requirement that the husband report at regular intervals to a designated officer. Some of these provisions in practice are rarely used, for example, cash deposits and bonds.

### Review and Appeal

In all provinces, a review of the case may be obtained on application of either husband or wife on evidence that the needs or condition of either have changed. The judge may vary the order in accordance with the circumstances. The New Brunswick Act includes a clause, "Any order made under this Act may be set aside on a review only if the judge is of the opinion that there has been a miscarriage of justice, and no order shall be set aside on merely technical grounds".

Provision for appeal exists in all provinces either in the desertion or other relevant acts. Nova Scotia requires an affidavit setting forth the grounds of appeal and certifying that the appeal is not for the purpose of delay. In a number of provinces the legislation states that the terms of the order are enforceable pending the decision of the appeal court.

### Reciprocal Enforcement Legislation

All provinces and the Northwest and Yukon Territories have made provision in separate Acts for the enforcement of maintenance orders<sup>(1)</sup> on a reciprocal basis with other provinces or states. Under this legislation, where a province is satisfied that maintenance orders made therein may be enforced in another province or jurisdiction under the law of that other province or jurisdiction, the latter is declared to be a reciprocating state, which means that the province in turn will recognize and enforce in its own territory maintenance orders made in the other jurisdiction. Thus, provisional orders made in the jurisdiction where the deserted wife or child resides may be confirmed and enforced in another jurisdiction where the husband resides.

The British Columbia Act was passed in 1946, and in the same year the Conference of Commissioners on Uniformity of Legislation in Canada<sup>(2)</sup> recommended that this be considered the model statute providing for the reciprocal enforcement of maintenance orders and recommended that it be enacted by other provinces. These subsequently enacted similar legislation. The model statute was revised in 1956 and 1958 and amended in 1963, 1967 and 1970 by the Conference. A number of provinces have incorporated these changes in whole or in part.

Five provinces and the Yukon are authorized to recognize as reciprocating states, states or jurisdictions in or outside Canada; three provinces and the Northwest Territories may recognize any province in Canada, any part of the British

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(1) Filiation orders are not included in this legislation.

(2) A standing sub-committee of the Canadian Bar Association with representatives from each province and the federal government. The purpose of the Conference is to consider problems of uniformity of legislation in Canada. It meets annually immediately preceding the meeting of the Canadian Bar Association.



Commonwealth of Nations or Empire or any foreign state. New Brunswick recognizes any part of Her Majesty's Dominions or the Republic of Ireland<sup>(1)</sup>, and Quebec recognizes other provinces in Canada.

The acts outline the procedure to be followed when a maintenance order has been made against a husband or parent who is residing outside the province. The court in the locality where the wife or child resides may make a provisional order against the husband or parent who is in a reciprocating jurisdiction without service of notice on him and may proceed in the same way as if he had appeared at the hearing. The provisional order is then forwarded by the court to the Attorney-General of the province for transmittal through the Attorney-General or equivalent authority in the reciprocating state to the court of competent authority where the husband or parent resides. Such an order is provisional only until it is confirmed by the court in the reciprocating state to which the order is sent. This court may also vary or rescind the order and may enforce it in the same way as if it had been made by that court.

Under these statutes, the fact that the husband or parent has not been served with a summons does not prejudice the right of the wife or child to appeal against a court's refusal to make an order. The defendant has the same right of appeal, if any, that he would have if the order had been made by the court which confirmed it.

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(1) Under the Imperial Act, Maintenance Order (Facilities for Enforcement Act, 1920, arrangements might be made between England and Northern Ireland and Canadian Provinces for the reciprocal enforcement of maintenance orders. Reference to this Act is now contained in the present statutes relating to reciprocal provisions only in New Brunswick. In this province "reciprocating states" are considered to be those other than England and Northern Ireland since reciprocal arrangements for these two jurisdictions were already provided for under the Imperial Act at the time that the desertion act was passed. Manitoba and Saskatchewan deleted reference to the Imperial Act when they revised their Acts in 1961 and 1968 respectively. The remaining provinces have enacted legislation without reference to the Imperial Act.



PROVINCIAL AND TERRITORIAL LEGISLATION

NEWFOUNDLAND

Legislation

Under The Maintenance Act<sup>(1)</sup> a deserted wife or child may obtain support from the husband or parent.

The Maintenance Orders (Enforcement) Act<sup>(2)</sup> enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

THE MAINTENANCE ACT

Definitions

Deserted Wife

A deserted wife includes a wife who is living apart from her husband for any one of the following reasons: his acts of cruelty toward her or their children; his uncondoned adultery; his refusal to supply her and their children with necessities; his frequent drinking which renders him incapable of managing himself or his affairs, and causes him to be an "unfit and improper" person to have the custody and control of his children.

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(1) The Maintenance Act, R.S.N. 1952, No. 65. This Act also contains provision for the maintenance of dependent parents. The Act was amended by S.N. 1971, No. 71, The Minors (Attainment of Majority) Act which reduced the age of majority from 21 to 19 years.

(2) The Maintenance (Enforcement) Act, R.S.N. 1952, No. 127; amended by S.N. 1961, No. 34.

### Deserted Child

A child is any unmarried boy or girl under seventeen years of age, or one under nineteen who is unable because of physical or mental disability to provide for himself. The term "child" includes a grandchild, stepchild, foster and adopted child. A deserted child means a child whose parent, without reasonable cause, fails to provide maintenance, or a child who has left or been removed from the home of the parent due to neglect or acts of cruelty of the parent.

### Parent

For purposes of desertion a "parent" includes a guardian or a person who has the care and custody of the child. "Parent" also includes a stepparent or parent by adoption.

### Acts of Cruelty

Section 2 of the Act defines "acts of cruelty" as conduct "creating a danger to life, limb or health, or any course of conduct which in the opinion of the court is grossly insulting and intolerable or is of such a character, without proof of actual personal violence, that the wife or children seeking maintenance could not reasonably be expected to be willing to live with the husband or parent after he has been guilty of the same".

### Ineligibility of Wife

No order can be made in favour of a wife who is proven to have committed adultery, unless it has been condoned. An order already made may be rescinded upon proof that she has been guilty of adultery since the order was made. Under these circumstances, an order may be made for the maintenance of the children, the amount to be paid to the person having their care or custody. A finding of adultery is not evidence of adultery under any other Act.

## Effect of a Separation Agreement

The existence of a separation agreement will not prevent the making of a maintenance order if the husband is in default, if he has not provided suitable for his wife and children in the agreement, or if the wife is, or is likely to be in need of public assistance.

## Support from Husband Living with His Family

A husband living with his family, who owns property or who is in receipt of wages or salary, may be required to pay to a third person an amount sufficient for the maintenance of his wife and children, when it is evident that his irresponsibility is exposing them to hardship or destitution.

Any person may lay the complaint, upon receipt of which the judge will issue a summons to the man to appear before him to show cause why he should not be ordered to pay a sum for the maintenance of his family.

The judge may impose any other conditions which he considers advisable.

## Court Procedure

### Complaint

A wife or child or a child's next friend may lay a complaint of desertion before a judge or a Family Court, a stipendiary magistrate or two justices of the peace acting together. The complaint may also be laid on behalf of the wife or child by any officer.<sup>(1)</sup> A summons, according to the form prescribed in the Act, is then issued by the judge to the husband or parent to appear in court at a specified time.

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(1) "Officer" is defined as a welfare officer, a probation officer of a Family Court, a probation officer or any other officer of the Department of Social Assistance, a member of the Constabulary Force of Newfoundland, and a member of the Royal Canadian Mounted Police stationed in Newfoundland.

### Service of Summons

The summons is served as provided under The Summary Jurisdiction Act or as the judge may direct. Provision is made for substitution of notice for service by letter, public advertisement or whatever means the judge may decide upon, if it is not possible to make prompt personal service.

### Warrant for Arrest

A warrant may be issued if the person in default of payment of a maintenance order apparently cannot be served with a summons, or having been served has ignored it, or an order for imprisonment has been made. If the defendant is believed to be on the point of disposing of his property or of leaving for another locality or province, the judge may issue a warrant for his arrest, even before a summons is issued. The defendant may be held in custody until disposition of the case, or may be required to give security in an amount to satisfy the judge.

### Hearing

The court hearing may be held in private. An order may be made whether or not the defendant appears, provided there is proof of service of summons or of substituted notice of summons, and the judge is satisfied that desertion within the meaning of the Act exists.

### Witnesses

Husband and wife "are competent and compellable witnesses to testify for or against each other and to disclose any communication relative to the matter under consideration made by either of them to the other during their marriage". Other witnesses may be called as required. The onus of proof of lawful or reasonable excuse for non-maintenance is upon the person alleging it.

### Content of Order

The judge may fix the amount to be paid by the husband or father and designate the times of payment. In fixing the amount he takes into consideration any property which the wife might have. If the wife is financially independent, the



husband is not required to contribute more than half the amount necessary for the maintenance of the children. As noted above, if the wife is not eligible, an order may be made for the maintenance of the children.

The judge may also include in the maintenance order a provision that the husband may not enter the wife's premises, and the penalty for failing to comply with this order, on summary conviction, is a fine of not more than \$100 or imprisonment not exceeding three months.

The order states the date on which the first payment is to be made.

### Costs

Any expenses incurred in serving of any process or otherwise involved in carrying out the terms of the Act are borne by the complainant if able to do so, and if not, they are paid out of a fund provided by the Legislature.

The judge may award costs in accordance with The Summary Jurisdiction Act and may also include a counsel fee of not more than \$50.

### Review and Appeal

A rehearing may be held if the judge is satisfied that the circumstances of any of the parties have changed since the order was made or additional evidence has become available. The order may be rescinded, confirmed or varied as the circumstances warrant.

Any person "feeling aggrieved by any judgment, order, or conviction" may appeal to the Supreme Court under The Summary Jurisdiction Act."

## Provisions for Enforcement

### Bond or Deposit

At the time of making the order, the judge may require the defendant to post a bond of not more than \$500 or a deposit of not more than \$250. Failure to do so can result in imprisonment up to three months or until the bond is given or the deposit made.

### Imprisonment

When default is made in the payment of any sum ordered to be paid and default is not due to inability to pay, the judge may sentence the defendant to imprisonment not exceeding six months, or less if the amount owing or the sum the judge sets, is paid. Imprisonment, however, may not be substituted for payment.

### Other Conditions

The judge may require the defendant to report to him from time to time to explain the reasons for his default, and may impose such conditions as he feels the circumstances warrant.

### Reporting to Designated Officer

In cases where the person benefiting from the maintenance order is a public charge or may become so should the defendant default in his payments, the judge may order the husband or parent to report regularly to a designated officer, whom he must satisfy that he is making the required payments.

Failure to report without cause constitutes an offence, and on conviction the defendant is liable to a fine not exceeding \$100 or imprisonment not exceeding three months.

### Transmission of Order

Whenever default in payment occurs, and the defendant resides in another part of the province, the judge who made the order may send a copy of the order, together with a

statement of the circumstances of the case to a judge in the area where the defendant resides. The judge to whom the matter has been referred has the power to enforce the terms of the order in the same way as the judge who made it and to whom a report of the action taken is sent.

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

When satisfied that reciprocal provisions have been made by any province of Canada, any part of the British Commonwealth of Nations or Empire or any foreign state for the enforcement therein of maintenance orders made in Newfoundland, the Lieutenant-Governor in Council may declare it a reciprocating state for the purposes of this Act. Orders then made in reciprocating states will be enforceable in Newfoundland. Orders in council have been passed by Newfoundland and the following states whereby each is declared to be a reciprocating state under their respective Acts:

Alberta	Australian Capital Territory
British Columbia	England and Northern Ireland
Manitoba	Islands of Guernsey, Alderney
New Brunswick	and Sark
Northwest Territories	Isle of Man
Nova Scotia	Malta
Ontario	New Guinea
Quebec	New South Wales
Prince Edward Island	New Zealand
Saskatchewan	Northern Territory of Australia
Yukon Territory	Papua
	Queensland
	South Australia
	Southern Rhodesia
	States of Jersey
	Tasmania
	Victoria
	Western Australia

PRINCE EDWARD ISLAND

Legislation

Under The Children's Act<sup>(1)</sup> a deserted or destitute wife may claim maintenance from her husband for herself and their children.

The Reciprocal Enforcement of Maintenance Order Act<sup>(2)</sup> enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

THE CHILDREN'S ACT (PART III)

Definitions

Deserted Wife

A deserted wife is defined as a wife who is deserted by her husband "by any act or omission which would amount to desertion by the common law of England", or one who is living apart from her husband because of his assaults or other acts of cruelty toward her or her children, because of his refusal or neglect, without sufficient cause, to supply her and his children with food, clothing, or other necessities, or who, because of frequent drinking of intoxicating liquor, is incapable of managing himself and his affairs or is an unfit and improper person to have custody and control of his infant children, or because of his adultery that has not been condoned.

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(1) The Children's Act, R.S.P.E.I. 1951, c. 23, Part III, Deserted Wives and Children; amended by S.P.E.I., 1953, c. 6; 1955, c. 4; 1968, c. 5; 1969, c. 4.

(2) The Reciprocal Enforcement of Maintenance Orders Act, R.S.P.E.I., 1951, c. 139.



### Destitute Wife

A destitute wife is one who is in "necessitous circumstances" because of her husband's neglect or refusal without sufficient cause to supply her and their infant children with food, clothing or other necessities.

### Acts of Cruelty

" 'Acts of cruelty' includes any conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, that renders the home an unfit place either for a wife or child."

### Ineligibility of Wife

The judge cannot make an order in favour of a wife if it is proved that she has committed adultery, unless it can be shown that it was condoned by her husband. An order may be rescinded on proof that the wife has committed uncondoned adultery since the order was made. Under these circumstances an order may be made on behalf of the children to the institution or person in whose custody they are. A finding that adultery has been proved is not evidence of adultery except for proceedings under this Part.

### Court Procedure

#### Complaint

A wife may make her complaint in writing to a judge of any county court, or the Provincial Guardian or the Attorney General may make it on her behalf whether or not aid has been given to the wife by any public organization. Subsequent procedures are the same as if the wife had made the complaint herself.

#### Summons to Defendant

Upon receipt of the complaint the judge may issue a summons on the prescribed form requiring the husband to appear in court at a specified time to show cause why he should not be "ordered to pay his wife a sum sufficient for her

maintenance and the maintenance of her infant children". Where prompt personal service of the summons cannot be effected, the judge may arrange for the substitution of notice for service by letter, public advertisement or otherwise.

### Hearing

At the discretion of the judge, the case may be heard in private. An order may be made whether or not the husband is present at the hearing provided there is proof of service of summons or substituted notice for service of summons.

### Witnesses

The judge may examine under oath, the wife, husband and all witnesses the judge thinks requisite.

### Maintenance Order

If the wife is found by the judge to be destitute or deserted, he may order the husband to pay to her a weekly sum not exceeding \$40. for the maintenance of herself and infant children. In fixing the amount, the judge considers the means of both husband and wife. If the wife has separate property sufficient for the maintenance of herself and the children, the judge may not fix the amount to be paid by the husband in excess of half the amount required for the maintenance of the children. Where the means of both are equal, the law recognizes the equal responsibility of each parent to contribute to the maintenance of the children.

The husband may be required to make payments direct to the wife. As noted above, where the wife is ineligible, maintenance may be paid by the husband to the orphanage or institution giving assistance in maintaining the children or to the person having their care or custody.

### Costs

The maintenance order also fixes the amount which the husband shall pay as costs, which includes all expenses in connection with summons, hearing and witness fees.

### Review and Appeal

Upon application of either husband or wife or of any person entitled to make complaint on behalf of the wife, the judge will review the case upon proof that the means of husband or wife or the needs of the children have altered.

Payment under any order is not suspended by an appeal or other proceeding unless an interim order suspending the order in whole or in part is made by the court in which the appeal or other proceeding is pending. If payments are in default under an order, any appeal or other proceeding taken by the defendant may be dismissed.

### Provisions for Enforcement

#### Warrant of Execution

At the request of the wife or any person entitled to make complaint on behalf of the wife or child, the judge shall issue a warrant of execution upon default of payment of any weekly sum or costs ordered to be made. Every execution shall be for the recovery of the sum owing, together with costs. Such warrant of execution is treated as an execution under The County Court Act.

#### Lien

A maintenance order may be registered in the office of the Registrar of Deeds for any county on the written consent of the judge, to be a lien and charge upon any property the husband may have within the county, but subject to any prior encumbrances or liens affecting the lands at the time of registration. If necessary to enforce the lien, the wife or Provincial Guardian or Attorney General may apply to a judge of the Supreme Court who will issue a statute execution to sell the land. If a prior lien exists, the summons will be served on the person holding the prior lien.

### Warrant of Distress

At any time the husband is in arrears of his payments, or fails to make any payments, the judge may issue a summons requiring him to appear in court to explain his situation. Should he not appear, or should he have disposed of any property since the order was made, or should he fail to satisfy the judge that he cannot pay the amount, the judge may issue a warrant of distress to the sheriff, constable or bailiff of any county to levy against his property such amount as is owing together with costs.

### Judgment

An order, if entered as a judgment, may be enforced as such, and in the same manner by execution, garnishee attachment or otherwise.

## THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

When satisfied that reciprocal provisions have been made by any province in Canada, any part of the British Commonwealth of Nations or any foreign state for the enforcement therein of maintenance orders made in Prince Edward Island, the Lieutenant-Governor in Council may declare it a reciprocating state for purposes of the Act, whereupon maintenance orders made in a reciprocating state may be enforced in Prince Edward Island. Complementary orders in council have been passed by Prince Edward Island and the following states whereby each is declared a reciprocating state under their respective Acts:

Alberta	Australian Capital Territory
British Columbia	Colony of Southern Rhodesia
Manitoba	England
New Brunswick	Isle of Man
Newfoundland	Malta and its Dependencies
Nova Scotia	New Zealand
Ontario	Northern Ireland
Quebec	Northern Territory of Australia
Saskatchewan	State of Queensland
Northwest Territories	State of New South Wales
Yukon Territory	State of Tasmania



State of South Australia  
State of Victoria  
State of Western Australia  
States of Jersey  
Territories of Papua and  
New Guinea

NOVA SCOTIA

Legislation

Under the Wives' and Children's Maintenance Act(1) a deserted wife or child may obtain support from a husband or parent.

The Maintenance Orders Enforcement Act(2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

WIVES' AND CHILDREN'S MAINTENANCE ACT

Definitions

Deserted Wife

A deserted wife is defined as one whose husband, without sufficient cause, fails to provide her with reasonable maintenance, whether or not she is living with her husband, or one who is living apart from her husband because of his acts of cruelty(3) or because of reasonable apprehension of receiving bodily harm from him, or because of his failure to provide for her. A deserted wife includes a woman who has lived with a man as man and wife continuously for not less than one year preceding the making of a complaint under the Act.

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(1) Wives' and Children's Maintenance Act, R.S.N.S. 1967, c. 341; amended by S.N.S. 1969, c. 84; 1970, c. 78; 1970-71, c. 65; 1972, c. 18 (The Summary Proceedings Act); 1973, Bill No. 36.

(2) Maintenance Orders Enforcement Act, R.S.N.S. 1967, c. 173; amended by S.N.S. 1968, c. 37.

(3) 'Acts of cruelty' are not defined in the Act.

## Deserted Child

A deserted child is defined as a child under eighteen years whose father or mother without sufficient cause fails to provide him with reasonable maintenance, and includes a child of a man and woman who lived together as man and wife continuously for not less than one year.

## Ineligibility of Wife

No order may be made in favour of a wife who is proved to have committed adultery, unless it has been condoned by her husband. If the wife has committed uncondoned adultery since an order was made, the order may be rescinded. A finding of adultery is not evidence of adultery under any other Act.

## Court Procedure

### Complaint

The wife or any person having the care of the child or children, or any other person with the consent of the Attorney General, may make a complaint in writing on the prescribed form before a magistrate<sup>(1)</sup> or a justice. A complaint made with the consent of the Attorney General in writing may be made with or without the consent of the person on whose behalf it is made.

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(1) Magistrate is defined as a stipendiary magistrate, deputy stipendiary magistrate, provincial magistrate, acting provincial magistrate or deputy provincial magistrate having jurisdiction in the place in which the person on behalf of whom the complaint is made resides. Section 3 of the Family Court Act provides that the Governor in Council may by order confer on the Family Court exclusive original jurisdiction or concurrent or general jurisdiction over any or all charges, offences and matters arising from any one of a number of specified Acts, including the Wives' and Children's Maintenance Act and the Maintenance Orders Enforcement Act.

### Summons or Warrant

Upon receipt of a complaint, the magistrate or justice must issue a summons to the person against whom the complaint is made requiring him to appear at the time and place mentioned in the summons. The magistrate or justice may issue a warrant in the first instance if he is satisfied by evidence on oath that the person against whom the complaint is made will not appear unless compelled to do so.

### Hearing

The presence of the defendant is required and, if he does not appear in answer to a summons, he may be brought before the court by warrant. The burden of proof of sufficient cause for non-maintenance is upon the person against whom the complaint is made.

The magistrate may make an order without proof of desertion if the husband or other person having liability for maintenance consents to the making of the order or has made an agreement under which he has undertaken to make payments to or in respect of the wife or child.

### Content of Order

The total sum ordered to be paid by any one person is limited to a sum that is reasonable in the circumstances.<sup>(1)</sup> In fixing the amount, consideration is given to the means of the husband and the wife and child; similar consideration is given to the means of all concerned when the child or children are in the care of a person other than a parent. Payment may be made to the wife or to some person designated by the magistrate on her behalf. In the case of a deserted child, payment may be made to the person having the care of the child or some other person designated by the magistrate. The order fixes the date on which the first payment is to be made. If costs are included, the time of payment is also specified.

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(1) As per the amendment of 1973; formerly the maximum weekly amount was \$100.



The magistrate may make an order providing for the custody or control of the child by the mother or the father, with provision for access by the other parent or by any other person. The magistrate is required to take into consideration the welfare of the child, the conduct of the mother or father and the wishes of both. Before making an order the magistrate may request the Administrator of Family and Child Welfare for a written report on the family situation, which is to include the name of the person writing the report and the sources of information. Copies of the report are given to each party by the magistrate, who, after hearing the reaction of each of the parties, may take it into consideration in making an order respecting custody of the child.

However, no order respecting custody of a child may be made, or if made becomes void, if an order respecting custody is made under the Infants' Custody Act, the Divorce Act (Canada) or by a judge of the Supreme Court.

An order may be made whether or not the wife or child is receiving aid from any public or private agency or is being cared for in any sanatorium or other public or charitable institution.

### Costs

The order may be made with or without costs. Costs are as prescribed by The Costs and Fees Act. In addition, on making an order or dismissing a complaint, the magistrate may allow a counsel fee of not more than \$25 to the successful party. If an order is varied or an application to vary an order is dismissed, a counsel fee of not more than \$25 is allowed to the successful party.

### Supreme Court Orders

A person, including a child, who is entitled to alimony or maintenance under a judgment, order or decree of the Supreme Court (including an order or decree of the court for divorce and matrimonial causes or of a judge of the county court), may apply to a magistrate having jurisdiction where the person required to provide the alimony or maintenance resides, to have the order registered as an order under this Act. Application may be made by the wife on her own behalf and on behalf of the child or by any person on behalf of the

child. Enforcement is then as if the order were made under this Act, but may not be enforced for amounts in excess of those specified in this Act and may not be varied or rescinded under this Act.

### Review and Appeal

Application may be made for review to a provincial magistrate sitting in the county, in which the person for whose maintenance the order was made resides or to the magistrate (or the judge of the county court) who made the order or who last varied the order or, in his absence, to any magistrate having jurisdiction in the locality where the order was made. The magistrate may rescind or vary the order as the circumstances warrant on proof that the means of the husband, father, mother or the needs of the deserted wife, child or children have changed in amount, or that other material circumstances have changed, or that the wife has committed adultery. Application may be made by any person against whom the order has been made, or by any person in whose favour it is made, or by the person who made the complaint, by any person entitled to lay a complaint, or, with the consent of the Attorney General, by any other person.

Any person "who thinks himself aggrieved" by any decision may appeal to a judge of the county court for the district in which the person on whose behalf the complaint was made resides. Application must be made by the appellant or his solicitor or agent within 10 days after the decision of the magistrate. It must be supported by an affidavit setting forth the principal grounds of appeal and certifying that appeal is not for the purpose of delay. The judge sets a time and place for the hearing which may not be earlier than four days after the application. In the meantime the appellant is required, at least three days before the hearing, to serve upon the opposite party a notice of the time and place of hearing together with a copy of the affidavit upon which the hearing was obtained.

## Provisions for Enforcement

### Recovery of Sum Due and Unpaid

Any sum due and unpaid may be recovered by the payee in the Supreme Court, in the county court, in the municipal court, or in the city court, or before one or more justices of the peace, or a stipendiary magistrate under the Justices' Courts Act.

### Summons or Warrant

If it is made to appear to a provincial magistrate sitting in the county where the person for whose maintenance the order was made resides or in which the person against whom the order was made resides, or to the magistrate who made the order or who last varied it, or in his absence any magistrate having jurisdiction in the place where the order was made, that the sum ordered has not been paid, he may issue a summons requiring the person in default to appear and explain the default. If the magistrate is satisfied that the person alleged to be in default will not appear without being compelled to do so he may issue a warrant in the first instance. If a summons issued for the purpose of bringing the defendant before the court to explain default is not obeyed or cannot be served, the magistrate may issue a warrant to apprehend the defendant and bring him before the court. These provisions do not apply to a woman.

### Attachment of Debts

Any magistrate may order that all debts, obligations and liabilities owing, payable or accruing from any person to the husband be attached to answer the order for payment. The garnishing order is binding from the time of service. The wife or person entitled to make a complaint on her behalf is required to make application to the magistrate and to declare on affidavit that the order is still unsatisfied and to state to the best of her knowledge the amount of the debt owing to her husband.

The husband is entitled to make application to a magistrate to have such an order reviewed and when both sides are considered the magistrate may confirm, vary or set aside the order made as a result of the application of the wife.

A person who violates a garnishing order is liable to a penalty of not less than \$100 or more than \$500, and in default of payment to imprisonment for one day for every two dollars of the penalty imposed.

### Imprisonment

If the person appears in response to the summons or by virtue of a warrant, and cannot satisfy the magistrate that he has reason for default, he may be imprisoned for not more than three months, unless the amount owing together with all costs are sooner paid.

## MAINTENANCE ORDERS ENFORCEMENT ACT

When satisfied that reciprocal provisions have been made with any province of Canada, any part of the British Commonwealth of Nations or Empire or any foreign state for the enforcement therein of maintenance orders made in Nova Scotia, the Lieutenant-Governor in Council may declare it a reciprocating state for purposes of this Act, whereupon maintenance orders made in reciprocating states may be enforced in Nova Scotia. Orders in council have been passed by Nova Scotia and the following states whereby each is declared to be a reciprocating state under their respective Acts:

Alberta  
British Columbia  
Manitoba  
New Brunswick  
Newfoundland  
Ontario  
Prince Edward Island  
Saskatchewan  
Northwest Territories  
Yukon Territory  
Quebec

England  
New Zealand, including the  
Cook Islands  
New South Wales  
Victoria, Australia  
Isle of Man  
Tasmania  
Bailiwick of Island of Guernsey  
Colony of Southern Rhodesia  
Australian Capital Territory



NEW BRUNSWICK

Legislation

Under The Deserted Wives and Children Maintenance Act<sup>(1)</sup> a deserted wife or child may obtain support from a husband or father.

The Reciprocal Enforcement of Maintenance Orders Act<sup>(2)</sup> enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

DESERTED WIVES AND CHILDREN MAINTENANCE ACT

Definitions

Deserted Wife

A wife is considered deserted if she is living apart from her husband because of his acts of cruelty<sup>(3)</sup> or because of his refusal or neglect, without sufficient cause, to supply her with food, clothing and other necessities when he is able to do so, or because of his adultery that she has neither connived at nor condoned.

Child

"Child" is defined as a person under 16 years or a person under 19 years who because of physical or mental disability or other cause is unable to provide himself with necessities of life and includes a child whose parents are not married to one another and a child to whom a person stands in loco parentis if that person's spouse is a parent of the child.

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(1) Deserted Wives and Children Maintenance Act, R.S.N.B. 1952, c. 61; amended by S.N.B. 1955, c. 43; 1956, c. 32; 1957, c. 34; 1958, c. 33; 1969, c. 40; 1967, c. 33; 1971, c. 27; 1972, c. 26.

(2) Reciprocal Enforcement of Maintenance Orders Act, R.S.N.B. 1952, c. 193, amended by S.N.B. 1953, c. 25; 1954, c. 72; 1970, c. 43.

(3) The Act does not define "cruelty".

### Deserted Child

A child is deemed to be deserted when his father or mother while able to do so has refused or neglected to supply the child with food, clothing or other necessities.

### Liability for Maintenance

A husband, wife, father or mother is liable for the maintenance of his children in accordance with this Act.

### Ineligibility of Wife

A finding of desertion is not made if the judge is satisfied that the cause of the alleged desertion is the adultery of the wife that the husband has neither connived at nor condoned.

### Separation Agreement

The existence of a separation agreement will not effect the making of a maintenance order if the wife is living separate and apart from her husband pursuant to the agreement for any of the reasons for which she might be considered deserted and if payments are in default whether or not the separation agreement contains express provisions excluding the operation of this Act.

### Court Procedure

#### Complaint

The deserted wife may petition a judge of the Provincial Court or a judge of a juvenile court having jurisdiction where the husband or wife then resides. Where a child only is concerned, the child or a person having the care of the child may petition a judge having jurisdiction where the father, mother or the child then resides for an order of the court requiring the father or the mother to support him and any other children mentioned in the petition.

### Notice to Appear Before Judge

On receipt of a petition, the judge may cause to be mailed to the husband or parent (father or mother) a notice to appear before him to show cause why an order should not be made against him. If the husband or parent is outside the province, the judge may order the summons to be served on the husband or parent wherever the husband or parent is and also may direct the manner of serving and proving service.

### Summons

If a husband or parent does not appear before the judge in accordance with the notice mailed to him, the judge may issue a summons requiring that person to appear at the time and place mentioned in the summons.

A summons is applied for, granted and served in the same manner as a summons under the Summary Convictions Act or in such other manner as the judge directs.

### Hearing

The hearing may be held in private at the discretion of the judge. The hearing may proceed and an order made in the absence of the husband or parent, provided there is proof of service of summons or substituted service if such has been ordered.

The judge may hear any testimony as to the means and assets of a person. In every case the onus is on the person against whom the order is sought to show that he is unable to maintain in whole or in part the person he is liable to support under this Act.

### Content of Order

The judge in setting the amount to be paid under the order, is required to take into account the means of the husband and the means which the wife may have for her support and the support of the children and to any means the child or children may have for his or their own support. The judge also takes into account any amount paid or payable by the husband or father under an order made under the Children of Unmarried Parents Act.

The judge may order that the husband pay to the wife or to the court or to the person named in the order for the use of his wife and children, an amount not to exceed \$60 a week for his wife and \$20 a week for the maintenance of each child. Where a deserted child only is concerned the maximum weekly amount that the parent may be ordered to pay is \$40. The parent may be ordered to pay this amount for each child where more than one child has been deserted; a separate order is not required for each child. Payment is made to the person having custody of the child, to the court or to such other person named in the order.

The judge may include in the maintenance order provision for custody of the child and right of access of any person, taking into consideration the welfare of the child. He may at any time alter, vary or discharge any provision so made.

### Review and Appeal

Either party may apply for a review of the case to the judge who made the order, or in his absence to the judge in the same locality before whom a similar original application could have been laid. In any case, application may be made to any judge of the juvenile court or judge in the locality where the person in whose favour the order is made resides. Proof is required that the circumstances of any of the parties have changed since the making of the order. Ten days' notice must be given the other party of the pending review.

If review is at the instance of the person against whom the order was made, the judge may confirm, rescind or vary the order as he considers just. If review is at the instance of the person in whose favour the order was made, the judge may confirm or vary the order as he considers just.

Either party may have the order reviewed by the judge of the County Court for the county in which the proceedings were held. The procedure for such a review is as for an appeal under the Summary Convictions Act. An order made under this Act may be set aside or varied only if the judge is of the opinion that there has been a miscarriage of justice. It may not be set aside on merely technical grounds.



## Provisions for Enforcement

### Summons

If a sum is not paid as ordered, under a maintenance order, the judge may issue a summons requiring the person against whom the order was made to appear at the time and place specified in the summons to show cause why the order should not be enforced.

### Warrant for Arrest

If the husband or parent disobeys a summons or there is reason to believe he may disobey it or may attempt to leave the province, or he is in arrears in the payment ordered, the judge may issue a warrant directing any peace officer to apprehend that person and to bring him before the judge or the judge who may be sitting in his stead.

Under these circumstances, Section 11 of the Summary Convictions Act, insofar as it is not inconsistent with this Act, applies mutatis mutandis, to all proceedings. (Section 11 provides that when a party is brought before him upon a warrant the magistrate may proceed at once with the hearing or adjourn the case. In the latter course, section 23 applies. Section 23 authorizes the court to permit the defendant to be at large, commit him to a prison or other safe custody, discharge him upon his recognizance with or without sureties or upon making a cash deposit.)

### Imprisonment

If the judge is satisfied that the person summoned is able to pay the sum ordered to be paid but refuses to do so, he may commit the person to imprisonment for contempt in addition to enforcing the order in such other manner as is provided for in this Act.

### Attachment of Debts

If the judge is satisfied that a person summoned to show cause why the order should not be enforced is able to comply with the order, he may issue a Payment Order. Such an Order directs a person indebted to the person who is in default to pay to the court or to a person named in the Payment Order a specified amount.

Such payments are applied against the amount payable under the maintenance order, and discharged to the extent of the payment the debt owing to the person against whom the maintenance order was made.

A person to whom a Payment Order is issued may appear before the Court at any time to give his reasons why the Order should be set aside or varied. A Payment Order has priority over any assignment of wages made after the desertion by the person against whom the maintenance order was made, and the assignment is void if it would prevent payments under the Payment Order which would otherwise be made.

The judge may enforce a Payment Order by like proceedings under the Summary Convictions Act in the case of a fine or penalty.

#### RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

When satisfied that reciprocal provisions have been made by any part of Her Majesty's Dominions or the Republic of Ireland for the enforcement therein of maintenance orders made in New Brunswick, the Lieutenant-Governor in Council may declare such part or the Republic to be a reciprocating state for purposes of this Act<sup>(1)</sup>, whereupon maintenance orders made in these states may be enforced in New Brunswick, Orders in Council have been passed by New Brunswick and the following provinces whereby each is declared a reciprocating state under their respective Acts:

Alberta  
British Columbia  
Manitoba  
Nova Scotia  
Ontario  
Prince Edward Island  
Quebec  
Saskatchewan

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(1) The Imperial Act, Maintenance Orders (Facilities for Enforcement) Act, 1920, extends to England and Northern Ireland.

QUEBEC

Legislation

The rights and obligations of members of the family are defined in the Civil Code, Book First, Title V (chapters V and VI) and Title VI (chapters I, II, III, and IV).

The Code of Civil Procedure outlines legal procedures generally, such as are involved in the serving of a summons, court hearing and appeal.

The Reciprocal Enforcement of Maintenance Orders Act<sup>(1)</sup> provides for the enforcement in Quebec of maintenance orders made in those provinces in which maintenance orders made in Quebec will be similarly enforced.

Liability of Parents

The fact of marriage obligates the husband to maintain and bring up his children. Under certain circumstances the wife may also be required to contribute to the expenses of the household and to the education of the children according to her means.

Liability of Husband and Wife

"Husband and wife mutually owe each other fidelity, succor and assistance". A husband is obliged to supply his wife with the necessaries of life according to his means and condition.

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1) R.S.Q. 1964, c. 23. The original Act was passed in 1952.

Causes for which a Husband or Wife may Petition for Separation  
from Bed and Board

A husband or wife may petition the court for a separation from the spouse on the grounds of adultery, of non-support, and of outrage, ill-usage or grievous insult, the interpretation of which is left to the discretion of the court. Such petition will normally include a request for maintenance as well as for the custody of children, if any. In cases involving outrage, ill-usage, or grievous insult, the court may postpone judgment in order to give husband and wife an opportunity to effect a reconciliation. The judge may authorize the wife to leave the common domicile and reside in a place designated by him or he may permit her to remain in the common domicile and order the husband to reside elsewhere.

Maintenance

The court may order one consort to pay an alimentary pension to the other consort for his maintenance during the suit for separation or divorce. Maintenance is awarded by the court according to the means and needs of each of the consorts.

The court may also decide as to the custody, maintenance and education of the children, relieve the wife of her obligation to live with her husband, and relieve the husband of his obligation to receive her and impose such other conditions as it deems appropriate.

Review

A review of the terms of the maintenance order may be obtained by a petition to a judge of the Superior Court if the circumstances of either party change so that the one consort can no longer pay maintenance, or the other no longer needs the amount originally fixed.

Legal Procedure

As provided in the Code of Civil Procedure, cases of separation and desertion are heard by the Superior Court, and at the discretion of the judge may be heard in camera.



If the wife is without means she may obtain public legal aid.

If the husband cannot be found, an action may be instituted in his absence, but he must be summoned through the newspapers.

The decision of the Superior Court may be appealed to the Court of Appeal.<sup>(1)</sup>

#### Provisions for Enforcement

A court order for maintenance may be enforced through a writ of execution under which property of the debtor may be sold, or wages or salary garnisheed.

#### PROVISIONS FOR ENFORCEMENT ON A RECIPROCAL BASIS

The Reciprocal Enforcement of Maintenance Orders Act provides that a maintenance order made in a reciprocating province when transmitted by the Attorney General of Quebec to the prothonotary of the Superior Court where the defendant has his domicile or residence, may be enforced in Quebec as if it had been rendered there, provided it is not inconsistent with the laws and rules of public order in force in Quebec, especially those relating to marriage. The defendant may oppose execution of the order on grounds of such incompatibility.

The execution of such judgments is subject to confirmation by the Superior Court in which the judgment is deposited. This confirmation with or without modification is obtained by a simple petition.

The Act also provides a procedure whereby a maintenance order rendered in Quebec may be referred for execution in another province.

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(1) Code of Civil Procedure, sections 813 and following.

This legislation applies only to provinces which have reciprocal arrangements with Quebec with respect to the enforcement of maintenance orders. The following provinces have been designated by orders of the Lieutenant-Governor in Council:

Alberta  
British Columbia  
Manitoba  
Newfoundland  
New Brunswick  
Nova Scotia  
Ontario  
Prince Edward Island

ONTARIO

Legislation

Under The Deserted Wives' and Children's Maintenance Act(1) a deserted wife or child may obtain support from a husband or father. The first Ontario legislation regarding maintenance for deserted wives was passed in 1888 under the title "The Married Women (Maintenance in Case of Desertion) Act", and for deserted children in 1922 under "The Deserted Wives' and Children's Maintenance Act".

The Reciprocal Enforcement of Maintenance Orders Act(2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT

Definitions

Deserted Wife

A wife is deserted when her husband has left her without having made adequate provision for her maintenance and the maintenance of his children residing with her when he is able to maintain them in whole or in part but refuses or neglects to do so.

A wife is also considered deserted when she is living apart from her husband because of his acts of cruelty, because of his refusal or neglect, without sufficient cause, to supply her with food and other necessities when he is able to do so, or because of his adultery, which she has not condoned.

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(1) The Deserted Wives' and Children's Maintenance Act, R.S.O. 1970, c. 128; S.O. 1971, c. 98 (The Age of Majority and Accountability Act).

(2) The Reciprocal Enforcement of Maintenance Orders Act, R.S.O. 1970, c. 403.

### Deserted Child

A child under sixteen years of age or who is sixteen or seventeen years of age and in full-time attendance at an educational institution is considered deserted by his father when the father has, without adequate cause, refused or neglected to supply the child with food or other necessities when able to do so.

### Cruelty

Cruelty is defined as "conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, which renders the home an unfit place, either for a wife or a child".

### Ineligibility of Wife

A wife who has been guilty of adultery, unless it has been condoned by her husband, cannot obtain maintenance under this Act, and at any time upon proof of uncondoned adultery committed since the making of an order, the order may be rescinded. A finding of adultery is not evidence of adultery in any other proceedings.

### Effect of a Separation Agreement

The existence of a separation agreement does not affect the making of a maintenance order under this Act if the husband is in default in his payments under the separation agreement, even if it contains express provisions excluding the operation of this Act.

### Court Procedure<sup>(1)</sup>

#### Complaint

A complaint may be laid by a deserted wife or child, or any person having the care or custody of a deserted child, or with the consent of the Crown Attorney, any other person. An information may be laid before a justice of the peace.

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(1) Except as otherwise provided, proceedings under this Act are as under The Summary Convictions Act.



### Summons

On receipt of an information, the justice of the peace may issue a summons against the husband. A summons may also be issued from time to time if the husband defaults in his payments and the provincial judge requires him to appear to explain the default.

### Warrant for Arrest

If the justice of the peace before whom an information has been laid is satisfied that the husband or father intends to leave the territorial jurisdiction of the justice of the peace he may, with written approval of a judge of a Provincial Court (Family Division), issue a warrant for his arrest.

### Hearing

The court hearing may be held in private. There is a Provincial Court (Family Division) for each county, district and regional municipality and proceedings under this Act are heard in that court.

If a defendant does not appear in answer to a summons the judge may issue a warrant to compel attendance. If he is known to reside in another locality within the province, however, the judge may, without issuing a warrant, hold a hearing in his absence and make a provisional order, which together with a transcript of the evidence and identifying information concerning the defendant is forwarded to the judge in the jurisdiction where the defendant is living. After a summons to the defendant and a hearing, the judge to whom the provisional order is sent may confirm the order or vary it as the circumstances warrant, and the order then becomes effective. At this hearing the defendant may raise any defence that he might have raised in the original proceedings and proceedings may be adjourned if it seems necessary to remit the case to the judge who made the order to take further evidence.

### Content of Order

The judge may make an order against the husband in favour of a deserted wife for her maintenance and the maintenance of his children residing with her at such intervals as the judge considers proper having regard to all the circumstances.

When a father has deserted his child, the judge may order that the father pay to the person named in the order for the support of the child such sum at such intervals as he considers proper, having regard to the means of both father and child.

The judge may include in the maintenance order provision for custody of the child and right of access by any person or by either parent, with consideration being given to the welfare of the child, the conduct of the parent or person concerned and the wishes of both father and mother.

### Costs

Costs in connection with serving a summons or warrant or in carrying out any of the provisions of the Act, are borne by the informant, if able to do so; otherwise costs may be paid out of moneys appropriated by the Legislature for that purpose.

### Review and Appeal

A rehearsing may take place if the judge is satisfied that the circumstances of any of the parties has changed or that further evidence is available. The order may be confirmed, rescinded or varied in accordance with the findings.

An appeal from an order may be heard at such time as the judge of the court to which the appeal is taken may appoint.

Payments must be made in accordance with the terms of the original order pending a decision of appeal or other proceeding, unless an interim order is obtained to suspend payment in whole or in part. If a person against whom an order is made is in default in his payments any appeal or other action may be dismissed.

## Provisions for Enforcement(1)

### Summons or Warrant on Default

When default in payment occurs, a justice of the peace may from time to time, summon the person in default before a judge to explain the default. If the service of summons is proved and the person does not appear, and sufficient reason for his absence is not given, or if the summons could not be served, the justice of the peace may issue a warrant for his arrest.

### Imprisonment or Fine

If a warrant has been issued for the arrest of a person in default of payments and he fails to satisfy the judge of his inability to pay, he may be imprisoned for not more than three months but he may be released before the three months has expired if he pays the sum owing, or lesser sum as fixed by the court.

Any person violating the provisions of custody or access made under the order may be liable to a fine of not more than \$100 or to imprisonment of not more than three months, or both.

### Reporting to a Designated Officer

If the person in whose favour the order is made, is, or is likely to become a public charge, the judge may order the defendant to report at regular intervals to a probation officer, a local director of a children's aid society, an official of the Ministry of Community and Social Services or of any municipality who is designated by the Minister of

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- (1) A person entitled to alimony or maintenance under a judgment or order of the Supreme Court or a surrogate court may file a copy of the judgment or order in the Provincial Court (Family Division) having jurisdiction where the person ordered to pay the alimony or maintenance resides, and when so filed, it is enforced in the same manner as an order made in that court under The Deserted Wives' and Children's Maintenance Act (The Provincial Courts Act, 1968).

Community and Social Services for this purpose, to ensure that he is complying with the terms of the order. Failure to report as required is considered an offence and a conviction renders the defendant liable to imprisonment for a term of not more than three months.

### Judgment

Any order may be filed with the clerk of any division court and enforced by garnishee proceedings, by execution, and by judgment summons in the same way as a judgment in the division court.

Enforcement Where Defendant is Living in Another Locality Within the Province

Where the payment is in arrears, provision is made in the Act for the transmission of a duplicate original of the order to a judge of a Provincial Court (Family Division) having jurisdiction in the locality where the defendant is residing. A summons is then issued against the defendant and procedure and enforcement of the terms of the order are the same as if he had been summoned to appear before the judge making the order.

### THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

When satisfied that reciprocal provisions have been made by a state in or outside Canada for the enforcement therein of maintenance orders<sup>(1)</sup> made in Ontario, the Lieutenant-Governor in Council may declare it a reciprocating state for purposes of the Act, whereupon maintenance orders made in reciprocating states may be enforced in Ontario. Orders in council have been passed by Ontario and the following governments whereby each is declared a reciprocating state under their respective Acts:

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(1) Under the 1970 amendment "maintenance order" means an order or certificate of a court for the periodical payment of money as alimony or as maintenance.



Alberta  
British Columbia  
Manitoba  
New Brunswick  
Newfoundland  
Nova Scotia  
Prince Edward Island  
Quebec  
Saskatchewan  
The Northwest Territories  
Yukon Territory  
California  
Michigan  
New York

Capital Territory of Australia  
England  
Guernsey, Alderney and Sark  
Isle of Man  
Malta and its Dependencies  
New South Wales  
New Zealand and the Cook Islands  
Northern Ireland  
Northern Territory of Australia  
Papua and New Guinea  
Queensland  
South Australia  
Southern Rhodesia  
States of Jersey  
Tasmania  
Union of South Africa  
Victoria  
Western Australia

MANITOBA

Legislation

Under the terms of The Wives' and Children's Maintenance Act(1) a wife or child may obtain maintenance from the husband or parent. The first legislation in Manitoba relating to maintenance for deserted or destitute wives and children was passed in 1902 under the title "The Married Women's Protection Act".

The Reciprocal Enforcement of Maintenance Orders Act(2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

THE WIVES' AND CHILDREN'S MAINTENANCE ACT

Liability of Parents

A man is legally liable to support, maintain and educate his children or the children of his wife up to the age of eighteen years. A widow or a married woman is similarly responsible for her children, but a husband is not absolved from his liability by this provision or by the provision of any other Act.

Eligibility of Wife

The wife or any person on her behalf may make application under this Act when her husband has been convicted of assault upon her, has deserted her without lawful excuse, has been guilty of persistent cruelty to

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(1) The Wives' and Children's Maintenance Act, R.S.M. 1970, c. W-170; amended by S.M. 1970, c. 77; c. 28.

(2) The Reciprocal Enforcement of Maintenance Orders Act, R.S.M. 1970, c. M-20.

her, is an habitual drunkard(1), or has neglected or refused, without reasonable excuse, to provide reasonable maintenance and support for her or her children.

### Eligibility of Child

A child under the age of eighteen years is considered eligible for maintenance under this Act if he has been deserted by or refused adequate support by the parent, guardian or other person liable for his support.

### Eligibility of a Woman Who Has Lived with a Man for a Year

If a woman has lived and cohabited with a man for at least one year and he is the father of any child born to her, application may be made for maintenance for herself and child provided it is made within one year from her ceasing to live and cohabit with him.

### Ineligibility of Wife

If the wife has committed adultery which the husband has not "condoned or connived at, or by his wilful misconduct condoned to" no order shall be made in her favour. A wife who deserts her husband "without lawful excuse" also forfeits her eligibility to claim maintenance. If the wife commits uncondoned adultery after the making of the order, the order may be rescinded, as it may be also if she voluntarily resumes cohabitation with her husband. However, the judge may not grant an application by a husband for the discharge of an order if the application is based solely on the ground that there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days and reconciliation between the spouses was the primary purpose of the resumption of cohabitation.

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(1) "Habitual drunkard" is defined as a person who by reason of frequent drinking of intoxicating liquor, is incapable at times of managing himself and his affairs or is an unfit and improper person to have the custody and control of his infant children.

### Effect of Separation Agreement

No maintenance order will be made when a separation agreement has been made unless the husband is in default in his payments, or unless he has not provided suitably according to his circumstances for his wife and children, or unless the wife is, or may become, a public charge.

### Application by Husband for an Order

A husband may make application to a county court judge or to a magistrate for an order if his wife is an habitual drunkard. If the complaint is proved, the judge or magistrate may make an order which may include any or all of the following provisions: that the husband is no longer bound to cohabit with his wife, that the custody of their children be committed to the husband, that the wife, under penalty of a fine, shall not enter the husband's premises. The judge or magistrate may also order the husband to pay to the wife or to a third person on her behalf such weekly or monthly sum as he considers reasonable having regard to the means of both husband and wife.

### Court Procedure

#### Complaint

The wife or any person on her behalf, or any person on behalf of a child may make application for an order to a county court judge or to a magistrate. Application to a county court judge is made on affidavit setting forth the causes of complaint; an application to a magistrate is made by laying an information upon oath. An affidavit or information may contain one or more grounds for complaint.

#### Service of Summons

Service of a summons to the defendant may be as for the service of writs under The County Court Act or by any person acting on behalf of the complainant.



If the defendant is outside the province, the judge or magistrate may order the summons to be served upon him, and may direct the manner of providing the service. Upon filing proof of service the judge or magistrate may proceed to hear and determine the complaint as if the summons had been served upon the defendant in the province.

### Hearing

The judge or magistrate has authority to hold the hearing in private with only the parties concerned, their professional representatives and witnesses present.

The Act requires the judge or magistrate, before there is a public hearing, to consider whether it would be well to hear the parties in private with a view to settlement by mutual consent of the matters in question. Under these circumstances, he may receive in their presence information from any person he believes to have knowledge of the relationship of the parties.

If no settlement is arrived at, and the parties consent, the judge or magistrate may make an order. In the absence of either settlement or consent, he may adjourn the hearing, and may include in the terms of the adjournment an order that the husband pay to the wife or to a third person on her behalf at specified intervals an amount he considers reasonable.

### Witnesses

Husband and wife are "competent and compellable witnesses against one another". Witnesses may be subpoenaed in the same manner as in a county court action.

The onus for proof of lawful or reasonable excuse is upon the person alleging it.

### Content of Maintenance Order

The judge or magistrate may order that the husband contribute to his wife's maintenance such weekly, bi-weekly, semi-monthly or monthly sum as he considers reasonable having regard to the means of both husband and wife. In addition, the order may contain any or all of the following provisions: that the wife is no longer bound to cohabit

with her husband; that the legal custody of their children be committed to the wife; that the husband be permitted to visit the children at such times and subject to conditions specified by the judge or magistrate; that the husband shall not enter any premises where his wife is living; that costs including solicitor's costs, be paid.

The sum directed by the order may be paid to the wife or to a third person on her behalf. If an order is made on behalf of a child, the amount is paid to a person or persons appointed by the judge or magistrate.

Notwithstanding the fact that the husband or wife is the owner or lessee of the family residence or that they are owners or joint tenants or tenants in common or are lessees jointly or severally, the judge or magistrate may include in the order a provision that one spouse will have the right to continue to live in the family residence until the rights of both or either as owners or as tenants are terminated under the law.

The grounds upon which an order has been made are not deemed to be condoned if there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days if reconciliation between the spouses was the primary purpose of the resumption of cohabitation.

### Review and Appeal

On application of either husband or wife or other person to any judge or magistrate in the judicial district in which the order was made, the order may be reviewed. The magistrate or judge may alter, vary, or discharge the order in accordance with the circumstances.

If the case has been heard before a magistrate, appeal is as under The Summary Convictions Act, if before a county court judge, it is the same as from any judgment of the county court. Pending the decision of the appeal court, the maintenance order is enforced as if no appeal had been made.

When a person appeals against an order made by a magistrate, unless the appeal court orders otherwise, he is not required to make a deposit of money or other security for the costs of appeal, or to furnish a transcript of the evidence taken before a magistrate.

### Provisions for Enforcement

#### Bond or Deposit

At the time of making the order the judge or magistrate may require the defendant to enter into a bond of not more than \$500, with or without sureties, or to make a deposit of not more than \$250. On failure to furnish the bond or deposit the judge or magistrate may commit the defendant to the common gaol for such period as he directs or until the bond is sooner given or a cash deposit made.

#### Imprisonment

If the defendant refuses or neglects to keep up his payments, any judge or magistrate in the judicial district in which the order was made, may on receipt of complaint and after the complainant has obtained a judgment, commit him to the common gaol for not more than 40 days, unless the order is sooner obeyed.

#### Distress Warrant

A distress warrant may be issued by a magistrate, or an execution issued out of a county court, and may be executed against the personal estate of the defendant, and the exemptions provided by The Executions Act do not apply.

#### Judgment

An order filed in the county court in the district where the defendant resides or in which the complaint arose becomes a judgment of the county court and is enforceable as such. A fee of fifty cents is charged for each order so filed. The court on application of the payee may appoint a receiver of any funds which are due, owing, or payable to or earned or to be earned by the husband or parent to the extent of the default or future instalments due under the order. The Garnishment Act applies in respect of any

garnishment issued to enforce an order under this Act where a receiver is appointed, the wages of the person against whom the order is made are exempt to the extent set out in The Garnishment Act.

### Registration Against Land

If a judgment or an order is registered in a land titles office it is a judgment for an order for maintenance to which The Judgments Act applies.

When an order or a judgment has been filed in a land titles office the judge may make an order discharging or partially discharging the order or judgment as it affects certain lands described in the original order or judgment, or he may make an order postponing the order or judgment to allow registration of a mortgage, lease or encumbrance with priority over the original order or judgment. Application for discharge or postponement of an order or judgment may be made by any interested party. Notice must be given to the person in whose favour the order is made before any action is taken.

### Limitation of Time

No limitation contained in any statute or law affects proceedings under this Act.

## RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

When satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement of maintenance orders made in Manitoba, the Lieutenant-Governor in Council may declare it a reciprocating state for purposes of this Act, whereupon, maintenance orders made in jurisdictions declared reciprocating states may be enforced in Manitoba. Orders in Council have been passed by Manitoba and the following states whereby each is declared to be a reciprocating state under their respective Acts:



Alberta  
British Columbia  
New Brunswick  
Newfoundland  
Nova Scotia  
Ontario  
Prince Edward Island  
Quebec  
Saskatchewan  
Northwest Territories  
Yukon Territory

State of New York

Barbados  
England and Northern Ireland  
Isle of Man  
Islands of Guernsey, Alderney  
and Sark  
State of Jersey  
Dominion of New Zealand  
Capital Territory, Australia  
Northern Territory, Australia  
State of New South Wales, Australia  
State of Queensland, Australia  
State of South Australia, Australia  
State of Tasmania, Australia  
State of Victoria, Australia  
State of Western Australia, Australia  
Rhodesia  
Territory of Papua and New Guinea

SASKATCHEWAN

Legislation

Under the Deserted Wives' and Children's Maintenance Act (1) a wife or child may obtain support from a husband or parent. The first legislation in Saskatchewan relating to maintenance for deserted or destitute wives and children was passed in 1911 under the title "Deserted Wives' Maintenance Act".

The Reciprocal Enforcement of Maintenance Orders Act (2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT

Definitions

Deserted Wife

A wife is considered deserted when her husband has, without sufficient cause, refused or neglected to supply her with food or other necessities, or when her husband has been guilty or uncondoned adultery or when she is living apart from him because of his acts of cruelty.

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(1) The Deserted Wives' and Children's Maintenance Act, R.S.S. 1965, c. 341; amended by S.S. 1968, c. 59. The Act was amended in respect of the definition of "child" by The Coming of Age Act, 1970, which reduced the upper age limit of a "child" from twenty-one to nineteen years, and was further amended by The Age of Majority Act, 1972, which defined a "child" as one under eighteen years.

(2) The Reciprocal Enforcement of Maintenance Orders Act, S.S. 1968, c. 59.

### Deserted Child

A "child" is any child under the age of sixteen, or under the age of eighteen if unable, because of mental or physical disability, to provide for himself. The Act applies to a child whether born in or out of wedlock, whose mother is married to a man who knew of the child's existence at the time of marriage. "Child" also includes the child of a man and a woman who are not married to one another, but who have lived together for at least one year.

A child is considered deserted when the parent has, without sufficient cause, refused or neglected to supply food or other necessities, or when the child has left or been removed from the home of the parent because of neglect, misconduct or acts of cruelty of the parent.

### Acts of Cruelty

"Acts of Cruelty" are defined as "conduct creating a danger to life, limb or health, or any course of conduct which in the opinion of the court is grossly insulting and intolerable or is of such a character, without proof of actual personal violence, that the wife or children seeking maintenance could not reasonably be expected to be willing to live with the husband or parent after he has been guilty of the same".

### Children Born Out of Wedlock

Maintenance may be obtained for a child of a man and woman who have lived together and cohabited for at least one year provided action is commenced within two years of the time they ceased living together and cohabiting or from the time the parent last gave support for the child.

### Effect of a Separation Agreement

An order may be made even though a separation agreement exists, if the husband is in default of payments, or if he has not provided suitably for his wife according to his circumstances, or if she is or is likely to become a public charge. Action may be taken under this Act even though the separation agreement contains a provision releasing the husband from further liability for her support.

### Ineligibility of Wife

No order may be made in favour of a wife who has committed adultery unless it "has been condoned or by the husband's misconduct condoned to". If uncondoned adultery is proven to have taken place after the making of a maintenance order, the order may be rescinded. An order may, however, be made on behalf of a child included in the application on behalf of the wife and child. A finding of adultery is not evidence of adultery under any other Act.

### Court Procedure

#### Complaint

The wife, or person having the care and custody of a child may make a complaint in writing on the prescribed form which is sworn before any justice of the peace, notary public, commissioner of oaths, provincial magistrate or judge of any district court. The complaint may be laid on behalf of the deserted wife or child by any officer of the municipality appointed by the council for that purpose if the wife or child is resident in a municipality. If wife or child is resident in a local improvement district, the complaint may be laid by a person designated by the Minister of Municipal Affairs or by an officer of that Department; if wife or child is resident in the Northern Saskatchewan Administration District, the complaint may be laid by a person designated by the Minister of Natural Resources. In any case, a complaint may be laid by an officer of the Department of Social Services designated for the purpose by the Minister of Social Services.(1)

#### Service of Summons

On receipt of a complaint, the court may issue a summons requiring the husband or parent to appear at the time and place mentioned in the summons to show cause why he should

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- (1) Under the Legal Assistance program a wife or child may obtain the services of a lawyer. The Department of Social Services and the municipalities are no longer involved in laying complaints on behalf of deserted wives and children as was envisaged when the Act was passed.



not be ordered to pay maintenance sufficient to provide his wife and/or child(ren) with food and other necessities. The summons may be served upon the husband or parent by any person on behalf of the complainant. If prompt personal service cannot be effected, the court may authorize substitution of notice for service by letter, public advertisement, or otherwise. If the defendant is outside the province, the court may order the summons served upon him wherever he may be found and may direct the manner of proving such service.

If the husband or parent is outside the province, the court may order the summons served upon him and direct the manner of proving such service. Upon proof of service, the court may proceed as if the summons had been served in the province.(1)

### Hearing

The hearing may be in private at the discretion of the court. The parties are competent and compellable witnesses against one another. The case is heard by a judge of a district court sitting and acting as a justice of the peace, or by a provincial magistrate sitting and acting as a justice of the peace. The hearing may be adjourned from time to time at the request of either party, but if it is at the request of the defendant, the court may order him to pay a sum, either a lump sum or in instalments, for the support of wife or child pending the outcome of the hearing. The burden of proof of inability to pay maintenance is upon the defendant, and if he fails to attend the hearing, an order may be made in his absence. The defendant may not claim as a defence against the making of an order that he is in debt or has paid debts.

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(1) Attendance of the husband or parent is voluntary, as a court in one province cannot require the attendance of a person resident in another province. The procedure to be followed to obtain a provisional order when the husband or parent is living in another province is described in section (3) "Reciprocal Enforcement Legislation", pp. 7-8.

### Content of Order

The court may order the husband to pay to his wife or to a third person on her behalf a sum on a monthly or weekly basis for the support of herself and her children, if any. The amount fixed is in accordance with the means of both husband and wife.

Maintenance to be paid on behalf of a deserted child only, is paid weekly or monthly to a named person who has consented to receive such funds, in an amount determined by the court.

The order states the date on which the first payment, and costs, if any, are to be made.

An order for maintenance made under this Act may not exceed the amount payable under any order which may have been made for alimony or maintenance by the Court of Queen's Bench.

### Rehearing

The court may, at the request of the husband, rehear an application at any time, after notice to the wife or child, and to the person who made the application. The court may confirm, rescind or vary the order.

### Costs

An order may be made with or without costs, which may include a fee for counsel. The costs of appeal are the same as the district court scale of costs and are at the discretion of the judge to whom appeal is made.

### Review and Appeal

An order may be reviewed upon proof that the means or circumstances of the husband, parent, wife or child have changed since the making of the order or since it was last varied and changes made accordingly. Where an order made under this Act or any former Act provides for the payment of moneys to the Minister or the department, the court may,

upon application of the husband, parent, wife, person having the care and custody of the child, or any person making a complaint, provide that the moneys be paid to a named person who has consented to receive them.

If either party "is aggrieved by an order for maintenance" or by a refusal or failure to make such an order, he or she may appeal to a judge of the Court of Queen's Bench in chambers. The judge has the power to give any judgment or to make any changes which he feels may be required, or he may require the court of first instance to make any order that the circumstances require. Further appeal may not be made except by permission of the judge.

Pending the disposal of the appeal, the judge may order the husband to pay to his wife, in a lump sum or in instalments, such sum as the judge orders for the support of the wife and children. The judge may also order the husband to pay his wife's costs in respect of the appeal or to give security for such costs.

The fact that an order has been made under this Act does not bar a husband or parent, against whom an order for alimony or maintenance has been made by the Court of Queen's Bench, from applying to that Court for a reduction of alimony or maintenance. If such a reduction is granted, the amount payable under this Act is similarly reduced without a further order being made.

### Provisions for Enforcement

#### Enforcement under the Criminal Code

A summons may be obtained from the court by the complainant or an officer of the Department of Welfare designated by the Minister for the purpose if the defendant has not made a payment together with costs within 21 days after the order was made, or less time if specified in the order or at any time that it is in arrears. The summons may be served on the husband or parent either personally or as directed by the court, and requires the defendant to appear at the time and place mentioned in the summons to show cause why the terms of the order should not be enforced.

Should the defendant not appear as required without good reason, or should not satisfy the court of his inability to pay the amount ordered, the court may enforce the order as under Part XXIV of the Criminal Code. Commitment to jail is permitted, but if such is ordered, it may not be considered in lieu of payment.

#### Forfeiture of Bond or Deposit

When a maintenance order is made the court may require the husband or parent to give a bond payable to the Minister of Welfare for not more than \$1,000 with sureties approved by the court, or a deposit of not more than \$1,000 to secure the fulfilment of the order. The bond or deposit is forwarded to the Minister by the court. The defendant may be imprisoned in the common jail for a period directed by the court if he fails to give the bond or make the deposit.

The complainant or an officer of the Department of Welfare designated by the Minister for the purpose may apply by affidavit to the court for forfeiture of the deposit for the fulfilment of the order. The court may make such an order, and the Minister may apply the amount of the deposit toward the amount payable under the maintenance order and the costs of the forfeiture proceedings. If a bond has been given, the court may order the sureties to pay to the Minister the sum stated in the bond, and the order may be enforced under the provisions relating to summary convictions under the Criminal Code. The court may make an order for costs in an amount it considers just, and in addition may allow a fee for counsel.

#### Judgment

On application of the wife or person who made the complaint, or an officer of the Department of Welfare designated for that purpose, the judge of the district court may endorse on the order the amount in default. Proof of arrears by affidavit is required for endorsement. The order is then filed in the district court and becomes a judgment of that court for the recovery by the wife or child from the husband or parent of the amount specified in the endorsement together with such costs as the judge may fix. Proceedings may be taken under the Attachment of Debts Act to recover the amount specified in the endorsement.



### Registration Against Land

An order made under this Act may be filed in any land registration district to form a lien or charge on all lands within that district of which husband or parent may be or may become the registered owner. An order so filed may be discharged by registration of discharge signed by the person in whose favour the order is made, or by an order for discharge made by a judge of the Court of Queen's Bench or the district court sitting in chambers upon application of the husband or parent. No fee is charged for registration of an order.

This provision does not apply while an order for payment of alimony or maintenance made by the Court of Queen's Bench remains in force.

### Warrant for Arrest

The court may issue a warrant to apprehend the defendant and bring him before the court, whether or not a summons has been issued, if it appears that he is about to leave the province, dispose of his property, or is otherwise attempting to avoid the obtaining or enforcement of a maintenance order.

### Medical Certificate

A husband or parent who alleges that he is physically unable to work and therefore cannot support his wife or child, may be required by the court to obtain a medical certificate from a qualified medical practitioner named by the court.

### Limitation of Time

No limitation contained in any other statute or law will affect the right to take proceedings or to enforce any order made under this Act.

## THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT

When satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement therein of maintenance orders made in Saskatchewan, the Lieutenant-Governor in Council may declare it a reciprocating state for

purposes of this Act, and maintenance orders made in reciprocating states may be enforced in Saskatchewan. Orders in council have been passed by Saskatchewan and the following governments whereby reciprocal provisions are in force under their respective Acts:

Alberta	Australian Capital Territory
British Columbia	England
Manitoba	Northern Ireland
New Brunswick	New Zealand
Newfoundland	Isle of Man
Nova Scotia	Queensland, Australia
Ontario	Victoria, Australia
Prince Edward Island	New South Wales, Australia
Northwest Territories	Tasmania, Australia
Yukon Territory	Western Australia
	States of Jersey
	Bailiwick of Guernsey
	Colony of Southern Rhodesia
	State of South Australia
	Territory of Papua and New Guinea
	State of Barbados

ALBERTA

Legislation

Under the Domestic Relations Act(1), a deserted wife may apply to the court for a maintenance order against her husband.(2)

The Reciprocal Enforcement of Maintenance Orders Act(3) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

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- (1) Domestic Relations Act, R.S.A. 1970, c. 113 (Part 4, Protection Orders). The Act contains the following Parts: Part 1 - Restitution of Conjugal Rights; Part 2 - Judicial Separation; Part 3 - Alimony and Maintenance; Part 4 - Protection Orders; Part 5 - Loss of Consortium; Part 6 - Jactitation of Marriage; Part 7 - Guardianship.
  - (2) The Maintenance Order Act sets out the liability for maintenance of family members. Under this Act, a husband is primarily responsible for the maintenance of his wife and a wife for the maintenance of her husband. The father and mother of a child under the age of sixteen are responsible for providing maintenance for the child, including adequate food, clothing, medical aid and lodging. Children are liable for the support of destitute parents. If a person liable to do so, fails to maintain another who is destitute as a result, the person entitled to maintenance or certain specified persons, including the Minister of Health and Social Development or the mayor or reeve of the municipality where the destitute person resides, may apply to a judge of the district court for a maintenance order. The Act provides for the enforcement of the order and for penalties for noncompliance with the rule.
  - (3) The Reciprocal Enforcement of Maintenance Orders Act, R.S.A. 1970, c. 313.

DOMESTIC RELATIONS ACT (PART 4)

Definitions

Deserted Wife

A wife is considered to be deserted when she is in fact deserted by her husband or is living apart from her husband because of his cruelty or because of his refusal or neglect, without sufficient cause, to supply her with food and other necessities when able to do so.

Cruelty(1)

Cruelty "is not confined in its meaning to conduct which creates a danger to life, limb or health, but includes any course of conduct that in the opinion of the Court is grossly insulting and intolerable, or is of such a character that the person seeking the separation could not reasonably be expected to be willing to live with the other after he or she has been guilty of such conduct".

Ineligibility of Wife

No order may be made in favour of a wife who is proved to have committed adultery, unless it has been condoned by her husband. An order may be rescinded on proof that she has committed uncondoned adultery after the making of the order. A finding that adultery has been committed or condoned is not evidence of adultery or of condonation for any purpose except for proceedings under this Part.

Procedure

Application

A deserted wife may apply in person and by a supporting affidavit of the relevant facts to a justice of the peace, who, if he is satisfied that her husband has neglected or refused,

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(1) Defined in Part 2, Sec. 7(2).



without sufficient cause, to provide reasonable maintenance for his wife or his wife and children may summons the husband to appear before a magistrate.

If a wife has not been deserted by her husband but has their children in her care she may apply to a magistrate for an order for maintenance restricted to maintenance for the children. A divorced woman, who has in her care and custody legitimate children of herself and her divorced husband and there is no order of the court for maintenance of the children, may apply to a magistrate for an order of maintenance restricted to maintenance of the children.

### Service of Summons

Service of summons may be as the magistrate directs.

### Hearing

The hearing may be held in private. The case may be reheard at any time on request of the husband, after notice to the wife. Where a family court with jurisdiction exists, cases of desertion are heard in that court.

At the hearing, the magistrate informs the husband of the contents of the supporting affidavit and asks him if he accepts liability for the maintenance of his wife or his wife and children. If the husband admits liability or if he denies liability but the magistrate finds that he does have liability, he may order the husband to pay to the wife or to a third party on her behalf and named in the order such weekly, semi-monthly, or monthly sum as he considers reasonable, having regard to the means of both husband and wife.

If a wife is found not to be a deserted wife, the court may make an order for maintenance restricted to the maintenance of the children.

### Costs

Costs may be assessed against the husband. Costs of appeal are at the discretion of the judge.

Review and Appeal

The magistrate may vary the order from time to time on application of either husband or wife upon proof that the means of either have altered since the making of the order or a subsequent order varying it.

Either party may appeal from an order or refusal to make an order either by way of stated case under Part XXIV of the Criminal Code or to the district court of the district within which the original decision was made. Notice must be given, in writing, to the magistrate who originally heard the case, and to the opposite party within 20 days of the original decision. If service cannot be effected on the magistrate who dealt with the matter, the judge of the court to which the appeal is being taken may direct that service be made upon some other person in place of the magistrate. If service upon the opposite party cannot be effected within the time specified, the judge may order substituted or other service or may dispense with service and may extend the time by another 20 days. The magistrate upon receipt of notice forwards to the appropriate court the order, all related documents, and a transcript of the evidence. When all documents are received, the clerk of the district court must notify the appropriate judge of the appeal court or the court, as the case may be, and the judge or court must fix a date for the hearing not less than 14 days after being so notified. All parties concerned must receive notice at least 10 days before the date set for the hearing. The judge of the district court may make any order he feels the circumstances warrant, and the order is enforceable in the same way as if made by the magistrate who originally heard the case.

## Provisions for Enforcement(1)

### Summons

A deserted wife, or any other person on her behalf, may obtain from a magistrate a summons against her husband if the sum ordered to be paid is not paid together with costs, if any, within 21 days of the making of the order or such lesser period as provided in the order, or if payment is in arrears. The summons may be served personally or as the magistrate may direct in writing. It requires the husband to attend at the time and place mentioned therein, to show cause why the order should not be enforced, and is returnable at least 10 days after service.

The applicant and all witnesses whom the court thinks proper may be examined on oath touching inquiries to be made on the return of the summons. If the defendant fails to appear in answer to the summons, or if he fails to satisfy the magistrate of his inability to pay, the magistrate may enforce the order by any means provided by Part XXIV of the Criminal Code.

### Other Provisions

Except as otherwise provided in this or any other Act, and except where contrary to the intent of this Part, Parts XXIII (Extraordinary Remedies) and XXIV (Summary Convictions) of the Criminal Code apply to proceedings under this Part.

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- (1) The Alimony Orders Enforcement Act provides for enforcement of orders under that Act where a decree of divorce or nullity of marriage or a judgment of judicial separation has been made by the Supreme Court to a wife or former wife for her maintenance. The Family Court Act provides that a person entitled to alimony or maintenance under an order of the Supreme Court may file a judgment in the Family Court, and when so filed it is enforceable in the same manner as an order made under Part 4 of the Domestic Relations Act. A welfare worker of the Province or municipality may file and enforce a judgment or order on behalf of a person receiving economic assistance who is entitled to file and enforce the judgment or order, but refuses to do so.

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

When satisfied that reciprocal provisions have been made with any jurisdiction in or outside Canada for the enforcement therein of maintenance orders made in Alberta, the Lieutenant-Governor in Council may declare it a reciprocating state for the purposes of this Act, whereupon, maintenance orders made in states so declared may be enforced in Alberta. Orders in council have been passed by Alberta and the following states whereby each is declared to be a reciprocating state under their respective Acts:

British Columbia	Australian Capital Territory
Manitoba	England
New Brunswick	Colony of Southern Rhodesia
Newfoundland	Isle of Man
Nova Scotia	Island of Malta
Ontario	New Zealand
Prince Edward Island	Northern Ireland
Saskatchewan	Northern Territory of Australia
Northwest Territories	Republic of South Africa
Yukon Territory	State of Jersey
	State of New South Wales
California	State of South Australia
	State of Victoria
	State of Western Australia
	Territory of Papua and New Guinea



BRITISH COLUMBIA

Legislation

Under the Family Relations Act(1), a deserted or destitute spouse may apply for a maintenance order against the other, and any person on behalf of a child may apply for an order requiring the parent to support the child. Part IV of the Act replaced the Wives' and Children's Maintenance Act (R.S. B.C. 1960, c. 490 as amended) and Part VI replaced The Reciprocal Enforcement of Maintenance Orders Act (R.S.B. 1960, c. 332 as amended). The first Act in British Columbia relating to the maintenance for deserted wives and children was passed in 1901.

THE FAMILY RELATIONS ACT - PART IV - FAMILY MAINTENANCE

Definitions

Spouse

"Spouse" means a husband or wife and also includes:

- (a) a person whose marriage has been dissolved but who was a husband or wife named in an order under this part or under the Wives' and Children's Maintenance Act;
- (b) a person whose marriage was dissolved not more than two years before application under this part;

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(1) The Family Relations Act, S.B.C. 1972, c. 20. The Act is divided into seven parts as follows: Part I - Generally of Matrimonial Matters and Family Relations; Part II - Judicial Separation; Part III - Alimony, Maintenance and Custody; Part IV - Family Maintenance; Part V - Parent's Maintenance; Part VI - Reciprocal Enforcement of Maintenance Orders; Part VII - Regulations, Transition and Repeal.

- (c) a man or woman who have lived together for a period of not less than two years and an application is made by one of them against the other not more than one year after they ceased living together as husband and wife.

### Child

"Child" means a child whether legitimate or illegitimate under the age of 19 years and includes:

- (a) a child of a woman who becomes the wife of a man who for a period of not less than one year during the marriage, contributes to the support and maintenance of the child;
- (b) a child of a man who becomes the husband of a woman who for a period of not less than one year during the marriage, contributes to the support and maintenance of the child;
- (c) an illegitimate child who is during wedlock:
  - (i) born to a wife but not fathered by her husband where the husband contributes to the support and maintenance of the child for a period of not less than one year during the marriage;
  - (ii) fathered by a husband but not born to the wife where the wife contributes to the support and maintenance of the child for a period of not less than one year during the marriage;
- (d) an illegitimate child born to a man or woman who have lived together as husband and wife for a period of not less than two years and for a period of not less than one year during that time:
  - (i) the man contributes to the support and maintenance of a child born of the woman before or during the period they lived together;
  - (ii) the woman contributes to the support and maintenance of a child of the man born before or during the period they lived together;

and application is made on behalf of the child not more than one year from the date the couple ceased living together as man and wife or the man or woman, as the case may be, last contributed to the support and maintenance of the child, whichever last occurs.

### Parent

"Parent" means a parent or guardian of a child, and also includes a man or woman who contributes to the support or maintenance of a child as outlined above under the definition of child.

### Liability of Parent

Notwithstanding any other Act, every parent is liable to support and maintain his children. The fact that more than one parent is liable to support and maintain a child under this Part does not prevent an order from being made against one of those parents or where an order is made against one, it does not affect the liability of the other parent.

### Eligibility of Child

Any person on behalf of a child may apply for an order where a parent neglects or refuses, without reasonable excuse, to provide reasonable support and maintenance for his child, or deserts his child, or his child is taken away from him under the Protection of Children Act because of his neglect or misconduct or acts of cruelty, or treats his child with mental or physical cruelty of such a kind that the child could not reasonably be expected to live with him.

### Eligibility of Spouse

A person may apply for an order where his or her spouse refuses or neglects, without reasonable excuse, to provide reasonable support and maintenance for his spouse, or ceases without reasonable excuse, to live with his

spouse, or treats his spouse with physical or mental cruelty of such a kind that his spouse could not reasonably be expected to live with him; or is by frequent drinking of intoxicating liquor, or frequent use of narcotics as defined by the Narcotic Control Act (Canada) a person with whom his spouse could not reasonably be expected to live; or is guilty of adultery, sodomy, bestiality, rape or a homosexual act that has not been invited, connived at or condoned by his spouse.

## Court Procedure

### Application

An application is made to a judge of the Provincial Court of British Columbia or to a justice of the peace in the prescribed form setting forth the causes or grounds of complaint. The application may include a cause or ground of complaint by the spouse and a cause or ground of complaint on behalf of a child.

### Service of Summons

A judge or justice of the peace may issue a summons requiring a spouse or parent to appear at the time and place mentioned in the summons or warrant to show cause before a judge why an order should not be made against him. If prompt personal service of a service cannot be made the judge or justice of the peace may order substituted service of summons by letter, advertisement or otherwise.

### Warrant for Arrest

A judge or justice of the peace may issue a warrant for the arrest of a spouse or parent whether or not a summons has been issued, where it appears that a summons cannot be served because the spouse or parent is evading service, or it appears the spouse or parent is about to abscond from the Province, dispose of his property or otherwise attempting to avoid the making or enforcing of an order, or where service of summons is proved and the spouse or parent does not appear for the hearing or for the resumption of a hearing that has been adjourned.



## Hearing

The hearing may be held in private. Where service of summons is proved and the spouse or parent does not appear, the judge may proceed with the hearing and may make an order in the absence of the spouse or parent.

Under certain circumstances the spouse or parent against whom the application is made or the summons is directed is not required to attend the hearing as directed. He may instead, not less than 24 hours before the hearing, apply to a judge at or near his residence or employment to hear his evidence and to determine whether or not it would be unreasonable to require him to attend the hearing at the place stated in the summons or application.<sup>(1)</sup> The judge hearing the evidence of the spouse or parent transmits his opinion to a judge at the place where the summons or application is returnable.

If the judge is of the opinion that attendance is unreasonable, he takes a statement in the prescribed form, and receives the evidence of the spouse or parent. Where a summons has been issued in response to an application for an order or where an order has been made and an application to alter, vary or rescind an order or any provision made in it or to cancel or reduce any arrears under it, the judge transmits the statement and any other information he

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- (1) The Family Relations Act Regulations require the judge issuing the summons to make sure that the following notice is prominently displayed on the face of the summons:

"The person against whom this summons is issued may

- (i) appear at the hearing at the time and place indicated; or
- (ii) if the act of travelling to attend at the hearing at the time and place indicated would result in a significant hardship to him, immediately contact the office of the Provincial Court, Family Division, nearest his place of residence or employment to advise concerning the nature of this hardship.

Special arrangements may be made on behalf of a person who would experience hardship, provided the Court is notified within the time specified in section 23 of the Family Relations Act."

considers necessary to the judge at the place where the summons or application is returnable. The latter judge hears the complainant or applicant, allows him to examine the statement and other information, and may make or refuse to make an order or if the application is made to enforce an existing order, may make such order for enforcement as he considers necessary and reasonable. A copy of the order is then transmitted to the other judge.

The judge may order the addition of another person to an application if it appears to him that such person is in whole or in part liable for the support and maintenance of a spouse or a child.

#### Witnesses

Spouses are competent and compellable witnesses against each other.

#### Content of Maintenance Order

The judge may order a parent to pay to any court or person designated in the order such weekly, semi-monthly or monthly sum as he considers necessary and reasonable to be applied toward the support and maintenance of the child, taking into account the liability of every parent and any other person to support and maintain the child, the means, circumstances, and other obligations and the physical or mental condition of every parent and the requirement of the child including his physical or mental condition, educational potential or other circumstances that in the opinion of the judge might entitle the child to additional sums for support and maintenance.

A spouse may be ordered to pay to his wife or former wife or to her husband or former husband or to any court or person designated in the order such weekly, semi-monthly or monthly sum as the judge considers necessary and reasonable to be applied toward the support and maintenance of the wife or husband, taking into account the extent to which the applicant spouse may have contributed to the causes or grounds of the complaint, the means, circumstances or other obligations and the physical or mental condition of both spouses, and the liability of any other person for the support and maintenance of the spouse.

The order may include any of the following provisions:

- (a) that a spouse is no longer bound to live with his wife or her husband as the case may be;
- (b) that the custody of a child be committed to one parent;
- (c) that a parent have reasonable access to a child or access at such times and subject to such conditions as the judge considers just and reasonable;
- (d) that where an order containing provisions (a) or (b) is made a spouse or parent may not enter any premises where his spouse or a child in the custody of a parent is living.

Where the spouses have never been husband and wife and where the child that a spouse is liable to support is in the custody of another spouse, the judge may, subject to any agreement entered into or order made under the Children of Unmarried Parents Act, make an order that a spouse pay until the child is six years of age, support and maintenance for the spouse who has the custody of the child.

The judge may also include in the order a provision that a spouse or parent has, subject to any conditions the judge may impose, the right to occupy or use the family residence until the rights of the spouses or parents in the family residence are determined by agreement or by a court.

### Costs

Any expenses incurred in serving a warrant or summons or in carrying out the provisions of the Act are borne by the complainant, if able to do so, otherwise they may be paid out of the sum appropriated by the Legislature for that purpose if the complainant is a resident of unorganized territory, or in organized territory, by the municipality in which the complainant resides. Costs incidental to the summons, hearing, order and witness fees may be assessed against the parent or spouse at the time the maintenance order is made.

Effect of Supreme Court Proceedings or Order(1)

The commencement of proceedings in the Supreme Court is not a bar to an application for an order against a spouse or a parent unless and until the Supreme Court makes an order providing the same relief as the applicant is applying for under this part. An order of the Supreme Court providing for custody or maintenance of, or access to a child, or maintenance of a spouse does not bar an application under this part in respect of relief not provided in the Supreme Court order.

A certified copy of an order for alimony or maintenance made by the Supreme Court when filed with the Provincial Court of British Columbia, may be enforced as an order under this part. If a spouse or parent alleges that such an order should be varied or rescinded the judge may receive any evidence presented and transmit the statement together with his recommendations to the Registrar of the Supreme Court at the place where the order was entered.

Provisions for Enforcement

Bond or Deposit

To secure the performance of an order the judge may from time to time require a spouse or a parent to enter into and deposit with a judge a bond in a sum not exceeding \$1,000 with or without sureties, to deposit in such manner and with such court or person as the judge directs in the order, a sum of money or such security as the judge considers necessary and reasonable.

Reporting to Designated Officer

The judge may require a spouse or parent to report to any court or person designated in the order for such period of time, and at such times and places as the judge considers necessary and reasonable.

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(1) See footnote page 9 re the Divorce Act (Canada).



### Fine or Imprisonment

A spouse or parent who fails to comply with an order not to enter any premises where his spouse or a child in the custody of a parent is living or who fails to provide a bond or a cash deposit or other security or who does not report to a designated officer as ordered by the judge to ensure the fulfillment of the order, is guilty of an offence and is liable on summary conviction to a fine of not more than \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

### Registration in Land Registry Office

Any order for the support and maintenance of a spouse or child, when certified by a clerk or judge of the Provincial Court of British Columbia, may be registered in any Land Registry Office of the Province, which is then required to charge the land of the spouse or parent against whom the order is registered. When an order is registered a judge may at any time and subject to such conditions as to security or otherwise as he considers necessary and reasonable, make an order discharging or partially discharging the registered order or postponing the registered order to allow the registration of a charge.

### Summons or Warrant

When a parent or spouse is in default under an order to contribute to the support and maintenance of his spouse or child, a judge may issue a summons or warrant requiring the spouse or parent to appear before a judge to show cause why the order should not be enforced. The judge may enforce payment of the amount in arrears as under the Summary Convictions Act, including probation or imprisonment.

### Attachment of Debts

Upon application of a spouse, parent or child affected by arrears in payments under an order for maintenance, a judge may make an order deemed to be an order under section 3 of the Attachment of Debts Act, and the order may include a provision that it remains in force for a period of three months unless a judge earlier discharges it. The order authorizes the seizure and attachment of any debt that becomes owing, payable or due at any time while the order remains in force. A garnishee,

that is any person, or the Crown or any of its agencies named in the order as likely to be a debtor of a spouse or a parent who is in arrears, is required to pay to any court or person designated in the order, the amount of the debt or the amount limited by the order.

### Warrant of Execution

When an order for maintenance is in arrears a spouse or parent or any person on behalf of a spouse or child may apply to a judge for a warrant of execution. Unless the judge orders otherwise, the warrant of execution may not be for the recovery of more than one year's arrears of maintenance. It is executed as under the Small Claims Act.

### Appeal

Any person affected by an order may appeal the order. The provisions of the Summary Convictions Act apply with any necessary changes.

## PART VI - RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

When satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders made in British Columbia, the Lieutenant-Governor in Council may declare it a reciprocating state for purposes of this Part, whereupon maintenance orders made in these jurisdictions may be enforced in British Columbia. Orders in council have been passed by British Columbia and the following jurisdictions whereby each is declared to be a reciprocating state under their respective Acts:

Alberta  
Manitoba  
New Brunswick  
Newfoundland  
Nova Scotia  
Ontario  
Prince Edward Island

Australian Capital Territory  
Bailiwick of Guernsey  
Barbados and its Dependencies  
Colony of Fiji  
Colony of Southern Rhodesia  
England and Northern Ireland  
Federal Republic of Germany

Quebec  
Saskatchewan  
Northwest Territories  
Yukon Territory

State of California  
State of Colorado  
State of Idaho  
State of Kansas  
State of Maine  
State of Montana  
State of Nevada  
State of New Mexico  
State of New York  
State of North Dakota  
State of Ohio  
State of Vermont  
State of Virginia  
State of Washington  
State of New Hampshire

Isle of Man  
New South Wales, Australia  
New Zealand  
Northern Territory of Australia  
Queensland, Australia  
Republic of Austria  
Republic of South Africa  
States of Jersey  
State of South Australia  
State of Tasmania  
State of West Australia  
State of Victoria  
Territory of Papua and New Guinea

NORTHWEST TERRITORIES

Legislation

The Maintenance Ordinance(1) sets out the responsibilities of relatives for maintenance generally.

The Maintenance Orders (Facilities for Enforcement) Ordinance(2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

The Maintenance Orders Enforcement Ordinance(3) provides for the enforcement of alimony orders(4), and maintenance orders whether the order is made under the Maintenance Ordinance or is registered or confirmed under the Maintenance Orders (Facilities for Enforcement) Ordinance.

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- (1) Maintenance Ordinance, Revised Ordinances of the Northwest Territories 1956, c. 62, amended by Ordinances 1961 (2nd Session), c. 3; 1969 (2nd Session), c. 19. This Ordinance provides for maintenance orders for the support of a poor person or a child and specifies the conditions under which a maintenance order may be made against the father of an illegitimate child.
- (2) The Maintenance Orders (Facilities for Enforcement) Ordinance, Revised Ordinances of the Northwest Territories, 1956, c. 63, amended by Ordinances 1963 (2nd Session), c. 17; 1972, c. 10. Affiliation orders are not covered under this Ordinance.
- (3) The Maintenance Orders Enforcement Ordinance, Ordinances of the Northwest Territories, 1969 (1st Session), c. 13. This Ordinance also provides for the enforcement of contribution orders made under the Child Welfare Ordinance.
- (4) "Alimony includes a sum made payable for the maintenance of a wife or former wife pursuant to a judgment of divorce, nullity of marriage or judicial separation, and a sum so made payable for the maintenance of a child."



## THE MAINTENANCE ORDINANCE

### Liability for Maintenance

The father and mother of every child under the age of sixteen years are responsible for providing maintenance, including adequate food, clothing, medical aid and lodging for the child. The mother becomes liable for maintenance if the father is unable to maintain the child, and she is able to do so.

Liability is extended to the grandparents; the grandfather becomes liable for maintenance if he is able to maintain the child and neither the father or mother of the child are able to do so; the grandmother becomes liable only if she is able to maintain the child, and the parents and the grandfather are not able to do so.

A husband is primarily liable for the maintenance of his wife, and a wife for that of her husband.

### Court Procedure

If a person liable for the maintenance of another, fails to provide support, the person entitled to maintenance may apply to a justice for a maintenance order. Application may be made on behalf of the person concerned by the Superintendent of Child Welfare or by the Director of Social Development.

No order will be made unless the justice is satisfied that the person against whom it is sought is able to provide maintenance.

### Content of Order

The order may include the instalments in which the maintenance is to be paid, the amount of the instalments, and to whom they are to be paid.

A maintenance order remains in effect until rescinded by the justice. In making an order the justice is required to exclude from consideration in estimating the amount to be specified in the order any aid from other sources.

The order may direct the sheriff that the amount recoverable under the order shall be levied upon the lands, goods and chattels of the persons against whom the order is made.

### Provisions for Enforcement

The Maintenance Ordinance provides that any person who fails to comply with the terms of a maintenance order is liable, on summary conviction, to a fine of not more than \$500, or in default of payment to imprisonment of not more than three months.

### THE MAINTENANCE ORDERS ENFORCEMENT ORDINANCE

Provisions for the enforcement of orders are set out in the Maintenance Orders Enforcement Ordinance. This ordinance also provides for the enforcement in the Territories of orders made outside the Territories provided they have been made under such circumstances as a similar order might have been made in the Territories.

#### Summons

If a person has not made any payments or has not maintained payments under an order, the person to whom the maintenance is payable or a person entitled to make application on behalf of such a person, may procure without fee a summons from the clerk or deputy clerk of the court if the order was made in the Territorial Court or, from the clerk or deputy clerk of a police magistrate's court in the case of all other orders, requiring the defendant to appear before a judge or a police magistrate at the time and place specified. The summons is in the form specified in the Act.

### Inquiry by Judge

At the time and place mentioned in the summons the judge may inquire into the resources of the defendant, his means and ability to comply with the order, the disposal he has made of any property since the order was made, any debts owing to him, and the circumstances under which he defaulted in payments. The judge may examine on oath the plaintiff, the defendant and any witness appearing on behalf of either of them.

### Warrant for Apprehension

If a defendant does not appear as required by the summons and gives no good and sufficient reason for his nonattendance, or if the judge is satisfied that the defendant is about to quit the jurisdiction, he may issue a warrant in the form prescribed in the Act for the apprehension and production of the defendant at a time and place to be fixed by the judge.

### Imprisonment

The judge may commit the defendant to prison for not more than six months if he has refused to submit himself to examination in obedience to a summons, if he does not answer to the satisfaction of the judge on any matter on which he is required to be examined, or if the judge is satisfied that the defendant has disposed of property or has concealed property for the express purpose of avoiding payments under the order, or that the defendant could have complied with the order wholly or in part but has refused to do so.

Before committing the defendant to prison for failure to appear as required by a summons, the judge must be satisfied that nonattendance is wilful or that the person has failed to attend after being twice summoned.

The defendant may be discharged before the expiration of the committal period if he complies with the order for payment and pays the costs incurred in the case.

## Appeal

An appeal from an order under the Maintenance Orders Enforcement Act made by a police magistrate may be made to a judge of the Territorial Court and from an order by a judge of the Territorial Court to the Court of Appeal.

## THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ORDINANCE

When satisfied that reciprocal provisions have been made by any province of Canada, any part of the British Commonwealth of Nations or Empire or any foreign state for the enforcement therein of maintenance orders made within the Territories, the Commissioner may declare it to be a reciprocating state for the purposes of this Ordinance, and maintenance orders made in a reciprocating state may be enforced in the Territories.

The Northwest Territories and the following governments have passed orders in council whereby each is declared a reciprocating state under their respective Acts:

Alberta	England and Northern Ireland
British Columbia	Isle of Man
Manitoba	States of Jersey
New Brunswick	New Zealand
Newfoundland	Southern Rhodesia
Nova Scotia	Malta and its Dependencies
Ontario	
Prince Edward Island	
Saskatchewan	
Yukon Territory	



YUKON TERRITORY

Legislation

The Maintenance Ordinance (1) sets out the responsibility for the maintenance of parents and of deserted wives and children. The first Ordinance relating to maintenance for deserted wives and children was The Deserted Wives' Maintenance Ordinance of 1938.

The Reciprocal Enforcement of Maintenance Orders Ordinance (2) enables reciprocal provisions to be made with other governments for the enforcement of maintenance orders.

THE DESERTED WIVES' MAINTENANCE ORDINANCE

Definitions

Deserted Wife

A deserted wife is defined as one who is living apart from her husband because of his assaults or other acts of cruelty toward her or her children or because of his refusal to supply her or her children with food, clothing or other necessities.

Destitute Wife

A destitute wife is one who is in necessitous circumstances because of her husband's refusal or neglect to supply her or their infant children with adequate food, clothing or other necessities, when he is able to do so.

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(1) The Maintenance Ordinance, R.O.Y.T. 1958, c. 68.

(2) The Reciprocal Enforcement of Maintenance Orders Ordinance, R.O.Y.T. 1958, c. 96; amended by O.Y.T. 1970 (First Session), c. 7; O.Y.T. 1971 (Third Session), c. 9.

### Liability for Maintenance

The father and mother of a child under eighteen years of age are required to provide maintenance including adequate food, clothing, medical aid and lodging for the child. The mother becomes liable if she is able to maintain the child and the father is unable to do so. Liability extends to the grandfather and grandmother of the child if the parents are deceased, and if they are able to maintain the child; the grandmother is liable only if the father, mother and grandfather are all deceased, and she is able to provide maintenance for the child.

A husband is primarily liable for the maintenance of his wife and the wife is primarily liable for the maintenance of her husband.

### Ineligibility of Wife

If it is proved that the wife has committed adultery "which the husband has not condoned or connived at, or by his wilful misconduct conduced to", or if she has deserted her husband without lawful excuse, no order may be made for her maintenance, unless the justice otherwise orders.

### Effect of Separation Agreement

With certain exceptions, no order for maintenance is made if husband and wife have separated by mutual agreement and the wife has agreed in writing to release her husband from liability for her maintenance. Exceptions are made if the husband is in default under the separation agreement, if he has not provided suitably for his wife according to his circumstances, or if the wife is or is likely to become a public charge.

## Court Procedure

### Complaint

A wife or any person having knowledge of failure of the responsible person to provide maintenance may make a complaint to a justice.(1)

### Service of Summons

On receipt of a complaint the justice may issue his summons requiring the husband to appear at the specified time and show cause why he should not support his wife and children.

### Hearing

At the discretion of the justice the hearing may be held in private. An order may be made whether or not the defendant appears provided there is proof of service of summons.

### Witnesses

Husband and wife are 'competent and compellable witnesses to testify for or against each other'.

### Content of Order

The order includes the amount which the defendant is required to pay as costs, and the date of the first monthly payment and the date of payments of costs.

### Costs

The costs of proceedings are the same as proceedings under the Criminal Code relating to summary convictions.

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(1) "Justice" means any police magistrate or two justices of the peace or a person or official having the authority and jurisdiction of two justices of the peace.

## Provisions for Enforcement

### Summons Upon Default

If no payment for maintenance together with costs has been made within thirty days after the order has been made, or within the time specified in the order, or if payment is in arrears, the wife or any person on behalf of the wife or child may obtain a summons from the justice who made the order.

The summons, which may be served personally or as the justice directs, requires the husband or parent to appear at the time and place mentioned in the summons to show cause why the maintenance order should not be enforced.

### Fine or Imprisonment

If the person summoned does not appear as required, or does not show sufficient reason for nonattendance, or does not satisfy the justice that he is unable to pay the sum ordered, the justice may enforce the order under the provisions of the Criminal Code relating to summary convictions. A fine or imprisonment may be ordered.

## Review and Appeal

Upon proof that the circumstances of any of the parties have changed since the making of the order or since it was last varied, the justice who made the order may vary or rescind it.

Any party aggrieved by an order for maintenance, or by a refusal or failure to make an order, may appeal from the decision of a justice to the Territorial Court. The court must base its decision on a new trial.

The maintenance order continues in force pending the outcome of the appeal, unless the justice who made the order directs otherwise.

Costs of an appeal are within the discretion of the court.



THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ORDINANCE

When satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders<sup>(1)</sup> made within the Territory, the Commissioner of the Yukon Territory may declare it to be a reciprocating state for purposes of this Ordinance, whereupon orders made in these jurisdictions may be enforced in the Yukon.

The Yukon and the following governments have passed orders in council whereby each is declared a reciprocating state under their respective Acts:

Alberta	England
British Columbia	Northern Ireland
Manitoba	States of Jersey
New Brunswick	New Zealand and the Cook Islands
Newfoundland	Isle of Man
Nova Scotia	Southern Rhodesia
Ontario	
Prince Edward Island	
Saskatchewan	
Northwest Territories	

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(1) An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders (O.Y.T. 1970, c. 7) contains the following definition: "Maintenance order" means an order, judgment, decree or other similar adjudication of a court that orders or directs, or contains provisions that order or direct, the periodic payment of money as alimony, or as maintenance, or as support for a dependant of the person against whom such order, judgment, decree or adjudication was made.



APPENDIX A

INCIDENCE OF DESERTION





## INCIDENCE OF DESERTION

Desertion is a matter of concern to social agencies and welfare authorities because it poses problems out of proportion to the number of deserted families and entails emotional as well as economic deprivation for the families concerned. It involves practical difficulties in locating the husband or father and in securing his support for the family either voluntarily or through legal action. It may require interim or possibly continuing public assistance for the families in need. For these reasons, social agencies and welfare authorities have had a continuing interest in assessing the size of the problem.

It is not possible to make any accurate assessment of the total situation. Many cases of desertion are not recorded because they do not come to the attention of a court or a welfare department, and many other cases are resolved informally through the counselling facilities of courts and welfare agencies. There are, however, some data on the number of deserted families receiving social assistance and some data from the courts.

### Provincial Welfare Data

All provinces provide for social assistance for deserted wives and mothers who meet the criteria of need. Statistics on these recipients are however not available for all provinces. Under the former mothers' allowances programs desertion was specified as one of the conditions of eligibility and statistics on recipients of mothers' allowances reflected the terms of the legislation. Mothers' allowances programs have now been amalgamated with social assistance programs covering a broad range of long-term need, and allowances to mothers with dependent children in a number of provinces are now based on need only, and published statistics do not always give the marital status of the recipient. There is some indication, however, that a significant proportion of the caseload consists of deserted wives and mothers. In Newfoundland, recipients with children who had been deserted represented 5.3 per cent of all cases with

eligible children in the long-term caseload in March 1972.(1) In Manitoba deserted mothers represented about 8 per cent of mothers receiving social allowances or just over 2 per cent of the total provincial caseload in December 1971.(2) In Nova Scotia deserted wives represented 8.5 per cent of the total provincial caseload in March 1971.(3) In Ontario, of 11,357 women whose applications for Family Benefits (the provincial social allowances program) were approved in 1969-70, 3,540 or about 32 per cent were deserted.(4)

Special provisions have been made in Ontario to assist deserted families who qualify for social assistance. The Ministry of Community and Social Services of Ontario has had for many years a Special Investigation Unit which investigates the whereabouts of men who have deserted their families. Also, the Department of Social Services of the Municipality of Metropolitan Toronto has a Deserted Wives' Unit which provides special services to deserted wives and children. This Unit collaborates with the provincial Special Investigation Unit and initiates court action on behalf of deserted wives to obtain financial support from the husband in cases where reconciliation does not appear possible.

In 1970, the Deserted Wives' Unit took 980 cases into court.(5) Those deserted wives who are eligible for municipal aid are granted an allowance, and to protect the family against need occasioned by the husband's default in payments, the Department of Social Services continues the allowance after an order is made against the husband, but the deserted wife makes an assignment to the Department of any money paid by the husband through the Court under the terms of the order.

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- (1) Annual Report, Department of Social Services and Rehabilitation, Year Ended March 31, 1971.
  - (2) Welfare Policy in Manitoba, A Report to the Planning and Priorities Committee of Cabinet Secretariat, Province of Manitoba, by Professor Clarence L. Barber, December 1972.
  - (3) Annual Report, Department of Social Services and Rehabilitation, Year Ended March 31, 1972.
  - (4) Annual Report, 1969-70, Department of Family and Social Services.
  - (5) Biennial Report 1969-70, Department of Social Services, the Municipality of Metropolitan Toronto.

## Court Convictions

Statistics of Criminal and Other Offences, published annually by Statistics Canada contains data by province under deserted wives' and children's maintenance legislation on convictions and on the sentence imposed, that is, whether fine, suspended sentence, gaol or prison, or other disposition. In 1969 there were 7,963 convictions of which 1,103 were convictions of females. These figures represent a wide range of family situations. In one situation, for example, a wife may lay a charge because she is left without support and without knowledge of her husband's whereabouts; in another, a wife may apply to the court for a maintenance order because she has left her husband because of his cruelty or other reason recognized by the desertion statute or she may have laid a charge because she and their children were receiving insufficient support from him. In some provinces a wife may be ordered to contribute to her husband's maintenance. In other cases, a father or mother may be ordered to contribute to the maintenance of a child.

It is not known how many of these convictions are recurrences within the year or recurrences from previous years which came before the court for failure to comply with an order. Also, there may be some duplication if a case involving a provisional maintenance order made by a court in one province and confirmed by a court in another is reported by both courts. Among new cases coming to the court, there may be some that in terms of break-up of the family are several years old, since the obligation to support his wife and family is a husband's continuing responsibility a charge may be laid after any interval of time following the initial desertion.





APPENDIX B

SUMMARY OF MAINTENANCE PROVISIONS



CHART 1. SUMMARY OF MAINTENANCE PROVISIONS UNDER DESERTION LEGISLATION

Province	Provisions Applicable to			
	Wife/Spouse	Child	Husband	Common-Law Unions
Newfoundland The Maintenance Act	<p>Deserted wife: includes a wife living apart from her husband because of</p> <p>(1) his acts of cruelty toward her or their children;</p> <p>(2) his refusal to supply her and their children with necessities;</p> <p>(3) his frequent drinking which renders him incapable of managing himself or his affairs and causes him to be an unfit and improper person to have the custody and control of his children;</p> <p>(4) his uncondoned adultery.</p>	<p>A deserted child.</p> <p>An unmarried child under 17 years of age or under 19 who is unable because of mental or physical disability to provide for himself whose parent without reasonable cause fails to provide maintenance, or a child who has left or been removed from the home of the parent because of neglect or acts of cruelty of the parent.</p>	No provision.	No provision.
Prince Edward Island The Children's Act (Part III)	<p>Deserted wife: one who is deserted by her husband by any act or omission which would amount to desertion by the common law of England or</p> <p>one who is living apart from her husband because of:</p> <p>(1) his assaults or other acts of cruelty toward her or her children;</p> <p>(2) his refusal or neglect without sufficient cause to supply her and her children with food, clothing or other necessities;</p> <p>(3) his frequent drinking of intoxicating liquor makes him incapable of managing himself and his affairs or an unfit and improper person to have custody and control of his infant children;</p>	Covered in Column 1.	No provision.	No provision.

Province	Wife/Spouse	Child	Husband	Common-Law Unions
<p>Prince Edward Island The Children's Act (Part III) (cont'd.)</p>	<p>(4) his uncondoned adultery. Destitute wife: one who is in necessitous circumstances because of her husband's neglect or refusal without sufficient cause to supply her and their infant children with food, clothing or other necessities.</p>			
<p>Nova Scotia Wives' and Children's Maintenance Act</p>	<p>Deserted wife: one whose husband, without sufficient cause, fails to provide her with reasonable maintenance or one who is living apart from her husband because of: (1) his acts of cruelty; (2) reasonable apprehension of receiving bodily harm from him; (3) his failure to provide for her.</p>	<p>Deserted child: a child under 18 years whose father or mother, without sufficient cause, fails to provide him with reasonable maintenance.</p>	<p>No provision.</p>	<p>A deserted wife includes a woman who has lived with a man as his wife continuously for not less than one year preceding the making of a complaint under the Act. A deserted child also includes the child of such a union.</p>
<p>New Brunswick The Deserted Wives' and Children's Maintenance Act</p>	<p>Deserted wife: one who is living separate and apart from her husband because of: (1) his acts of cruelty; (2) his refusal or neglect, without sufficient cause, to supply her with food, clothing and other neces- saries when able to do so; (3) his adultery that she has neither connived at nor condoned.</p>	<p>Deserted child: a child under 16, or under 19 if unable because of physical or mental disability or other cause, to provide him- self with the necessities of life, whose mother or father, while able to supply him with food, clothing or other neces- saries has refused or neglected to supply them.</p>	<p>No provision.</p>	<p>"Child" includes a child whose parents are not married to one another.</p>
<p>Quebec The Civil Code</p>	<p>A wife or husband may petition the court for separation from the other on grounds of adultery, non-support, outrage, ill-usage or grievous insult.</p>	<p>A husband is responsible for the maintenance of his children and under certain circumstances the wife may be required to contrib- ute to the expenses of the household and to the education of the children according to her means.</p>	<p>See Columns (1) and (2).</p>	<p>No provision.</p>



Province	Provisions Applicable To			
	Wife/Spouse	Child	Husband	Common-Law Unions
Ontario The Deserted Wives' and Children's Maintenance Act	<p>Deserted wife: one whose husband has left her without having made adequate provision for her maintenance and for the maintenance of his children residing with her when he is able to maintain them in whole or in part but refuses or neglects to do so;</p> <p>or</p> <p>one who is living apart from her husband because of:</p> <ol style="list-style-type: none"><li>(1) his acts of cruelty;</li><li>(2) his refusal or neglect, without sufficient cause, to supply her with food and other necessities when he is able to do so;</li><li>(3) his uncondoned adultery.</li></ol>	<p>Deserted child: a child under 16 years or a child of 16 or 17 years of age if attending an educational institution full-time, whose father has without adequate cause, refused or neglected to supply him with food or other necessities when able to do so.</p>	<p>No provision.</p>	<p>No provision.</p>
Manitoba The Wives' and Children's Maintenance Act	<p>An application for maintenance may be made by a wife if her husband:</p> <ol style="list-style-type: none"><li>(1) has been convicted of assault upon her;</li><li>(2) has deserted her without lawful cause;</li><li>(3) has been guilty of persistent cruelty to her;</li><li>(4) is an habitual drunkard;</li><li>(5) has neglected or refused, without reasonable excuse, to provide reasonable maintenance and support for her or her children.</li></ol>	<p>A child under 18 is considered eligible for maintenance if he has been deserted by or refused adequate support by the parent, guardian or other person liable for his support.</p>	<p>A husband may make application for an order if his wife is an habitual drunkard. The order may include any or all of the following provisions:</p> <ol style="list-style-type: none"><li>(1) that the husband is no longer bound to cohabit with his wife;</li><li>(2) that the custody of their children be committed to the husband;</li><li>(3) that the wife shall not enter the husband's premises;</li><li>(4) that the husband pay to the wife or a third person on her behalf such weekly or monthly sum as the judge considers reasonable.</li></ol>	<p>If a woman has lived and cohabited with a man for at least one year and he is the father of any child born to her, application may be made for maintenance for herself and the child provided it is made within one year from the date she ceased to live and cohabit with him.</p>

Province	Provisions Applicable To			
	Wife/Spouse	Child	Husband	Common-Law Unions
<u>Saskatchewan</u> The Deserted Wives' and Children's Maintenance Act	Deserted wife: one whose husband: (a) has without sufficient cause, refused or neglected to supply her with food or other necessities; (b) has been guilty of uncondoned adultery; or one who is living apart from her husband because of his acts of cruelty.	Deserted child: a child under 16, or under 18 if unable because of mental or physical disability to provide for himself, whose parent, without sufficient cause, has refused or neglected to supply food or other necessities. The Act applies to a child, whether born in or out of wedlock, whose mother is married to a man who knew of the child's existence at the time of marriage.	No provision.	Maintenance may be obtained for a child of a man and woman who have lived together and cohabited for at least one year provided action is commenced within two years of the time they ceased living together and cohabiting or from the time the parent last gave support for the child.
<u>Alberta</u> The Domestic Relations Act - Part IV	Deserted wife: one who is deserted by her husband or one who is living apart from her husband because of: (1) his cruelty; (2) his refusal or neglect, without sufficient cause, to supply her with food and other necessities.	A deserted wife is entitled to maintenance for the children in her custody. If a wife has not been deserted by her husband but has their children in her custody she may apply for an order restricted to maintenance for the children. A divorced woman, who has in her care the children of herself and her divorced husband, provided there is no order of the court for maintenance of the children, may apply for an order restricted to the maintenance of the children.	No provision.	No provision.
<u>British Columbia</u> The Family Relations Act - Part IV	A person may apply for an order where his or her spouse: (1) refuses or neglects, without reasonable excuse, to provide reasonable support and maintenance for his spouse; (2) ceases, without reasonable excuse, to live with his spouse; (3) treats his spouse with physical or mental cruelty of such a kind that his spouse could not reasonably be expected to live with him;	A child under 19, whether legitimate or illegitimate, including the child of a man or woman whose spouse for not less than one year during the marriage contributes to the support of the child, and an illegitimate child born during wedlock to a wife or husband whose spouse is not the father or mother, but who nevertheless contributes to the support and maintenance of the child for a period of not less than one year during the marriage.	As in Column 1.	"Spouse" includes a man or woman who have lived together for a period of not less than two years and an application is made by one of them against the other not more than one year after they ceased living together as man and wife. "Child" includes a child born to a man or woman who have lived together for a period of not less than two years and for a period of not less than one year during that time,

Province	Provisions Applicable To			
	Wife/Spouse	Child	Husband	Common-Law Unions
<p>British Columbia</p> <p>The Family Relations Act - Part IV (Cont'd.)</p>	<p>(4) is by frequent drinking of intoxicating liquor or frequent use of narcotics as defined by the Narcotic Control Act (Canada) a person with whom his spouse could not reasonably be expected to live;</p> <p>(5) is guilty of adultery, sodomy, bestiality, rape or a homosexual act that has not been invited, connived at or condoned by his spouse.</p>			<p>(a) the man contributed to the support and maintenance of a child born of the woman before or during the period they lived together;</p> <p>(b) the woman contributes to the support and maintenance of a child of the man born before or during the period they lived together</p> <p>and application is made on behalf of the child not more than one year from the date the couple ceased living together as man and wife or the man or woman, as the case may be, last contributed to the support and maintenance of the child.</p>
<p>Northwest Territories</p>	<p>A husband is primarily liable for the maintenance of his wife, and a wife for that of her husband.</p>	<p>The father and mother of a child under 16 are responsible for providing maintenance. Liability is extended to the grandparents if the parents are unable to maintain the child.</p>	<p>See Column 1.</p>	<p>No provision.</p>
<p><u>Yukon</u></p>	<p>Deserted wife: one who is living apart from her husband because of:</p> <p>(1) his assaults or other acts of cruelty toward her or her children;</p> <p>(2) his refusal to supply her or her children with food, clothing or other necessities.</p> <p>Destitute wife: one who is in necessitous circumstances because of her husband's refusal or neglect to supply her or her children with food, clothing or other necessities, when he is able to do so.</p>	<p>The father and mother of a child under 18 are responsible for providing maintenance. Liability is extended to the grandparents if the parents are unable to maintain the child.</p>	<p>No provision.</p>	<p>No provision.</p>



















